



# Childcare Act 2006 - Sections 22 and 26

Implementation of Sections 22 and 26 of the Childcare Act 2006

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## Consultation

Date of issue: 19 February 2007

Action required: Responses by 11 May 2007

# Childcare Act 2006 - Sections 22 and 26

<b>Audience</b>	Voluntary organisations in the childcare sector; Chief Executives of Local Authorities; Local Health Boards and NHS Trusts; Directors of LA Education and Social Services Depts. inc leads of Children's Services for Looked After Children; Children and Young People's Partnerships; Early Years Development and Childcare Partnerships; Genesis Wales Officers; Children's Information Services; Children's Commissioner for Wales; WLGA; Wales TUC Cymru; Social Partner contacts; County Librarians; Equal Opportunities Commission; Care Council for Wales; JobCentre Plus; Community Voluntary Services; Assembly Members.
<b>Overview</b>	This document consults on the draft guidance to Local Authorities and regulations to support them in carrying out their duty to secure sufficiency of childcare and to undertake childcare sufficiency assessments under the Childcare Act 2006.
<b>Action required</b>	All consultees are invited to respond to this consultation by 11th May 2007. Responses should be sent to the address below or competed electronically and sent to <a href="mailto:cymorth@wales.gsi.gov.uk">cymorth@wales.gsi.gov.uk</a>
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<b>Related documents</b>	Childcare strategy - "Childcare is for Children" Childcare Act 2006 and Explanatory Notes Stronger Partnerships for Better Outcomes

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# Implementation of Section 22 and Section 26 of the Childcare Act 2006

## Introduction

1. This document invites comments on the proposed guidance to Local Authorities for the implementation of section 22 and section 26 of the Childcare Act 2006 (Childcare Act) and draft regulations for section 26 (Local Authority childcare sufficiency assessment duty), due to come into effect on 1 April 2008.
2. The aim of this consultation is to establish the principles to guidance and regulations for implementing section 22 and section 26 of the Childcare Act which places a duty on Local Authorities to secure sufficient childcare to meet the needs of working parents and parents making the transition to work in the Local Authority's area, and to undertake a childcare sufficiency assessment.
3. This consultation is one of a series published to support the implementation of the Childcare Act. It should be considered alongside the guidance for Section 27 which places a duty on Local Authorities to provide information, advice and assistance to parents or prospective parents.
4. We welcome your views and comments on the issues raised in this consultation paper. We will use your responses to inform policy development and the statutory guidance issued by the Assembly and regulations under section 26 of the Childcare Act.
5. Please complete the loose-leaf questionnaire at Annex D and return with your comments, views and ideas to:

Child and Family Programmes Team  
Children's Strategy Division  
4<sup>th</sup> Floor CP2 South Core  
Welsh Assembly Government  
Cathays Park  
CARDIFF  
CF10 3NQ

6. The consultation period ends **11 May 2007**. You may wish to circulate this paper locally.
7. Besides seeking views in writing, to ensure that this is an active consultation we will be arranging various other consultations and events to involve interested parties and enable as wide a range of stakeholders as possible to contribute. There will be opportunities for stakeholders to be involved in the dialogue and make their views known as draft regulations and statutory guidance develop.

## The Legal Framework - The Childcare Act 2006

8. 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.
9. The Childcare Act will achieve these aims through statutory duties that will build on Local Authorities' existing roles and responsibilities. In Wales, it will:
  - Place a duty giving Local Authorities the lead role in facilitating the childcare market to ensure it meets the needs of working parents; in particular, those on low incomes, those with disabled children, or those who wish their child to attend Welsh medium provision.
  - Ensure people have access to the full range of information they need as a parent.
10. The intention of section 22 of the Childcare Act is to place 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.
11. Section 26 gives the Assembly power to make regulations requiring Local Authorities in Wales to prepare assessments of the sufficiency of childcare in their area. The regulations can prescribe:
  - How often such assessments need to be undertaken.
  - Whether they should be reviewed and how often.
  - How the review and assessment is to be undertaken and reviewed.
  - Who should be consulted.
12. 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 fulfill their childcare sufficiency duty under section 22.
13. Through statutory guidance and regulations we will look to ensure that these childcare duties are included within Children and Young People's Plans (CYPPs).
14. The draft guidance at Annex A explains the requirements on Local Authorities under section 22 and section 26 and explains the content of The Childcare (Local Authority Assessment) Regulations 2007 at Annex B. A Regulatory Impact Assessment has been included at Annex C. Local Authorities may wish to develop their services along these lines ahead of the implementation of the duty in April 2008.

## **Childcare Act 2006 and explanatory notes**

15. The Childcare Act 2006 and full explanatory notes can be viewed at [www.uk-legislation.hmsso.gov.uk/acts](http://www.uk-legislation.hmsso.gov.uk/acts).

## **Background to the Assessment of Childcare Sufficiency Duty of the Childcare Act 2006**

16. Currently section 118A (3) of the School Standards and Framework Act 1988, (as amended by the Education Act 2002), places a duty on Local Education Authorities to review annually the sufficiency of childcare provision for their areas. However, the current power does not define sufficiency and there is no requirement to ensure that there is sufficient childcare provision.
17. The section 26 duty under the Childcare Act replaces the duty to review the sufficiency of childcare on an annual basis under Section 118A of the School Standards and Framework Act 1988 (amended by the Education Act 2002).
18. The above ties in with the new 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 from 2008-11, setting out how the well-being of all children and young people in the area will be improved. Planning guidance will be issued in the summer of 2007, following consultation early that year.
19. 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. It is proposed that the first draft CYPPs are produced in May 2008. It is also proposed that review of Plans takes place annually, and that the Assembly Government is informed of any changes made.

## **Timetable**

20. The timetable for introduction of the duties under section 22 and section 26 of the Childcare Act, and the regulations to be made under section 26, is:
  - Consultation period February to May 2007.
  - Consultation events April, May 2007.
  - Report on consultation responses published June 2007.
  - Amended regulations published September 2007.
  - Amended guidance published December 2007.
  - Section 22 comes into force April 2008.
  - Section 26 comes into force April 2008.

21. Non-statutory good practice guidance may be published from time to time prior to April 2008, to assist Local Authorities in working toward fulfilling the new duties.

## Annex A

### Draft Guidance to Local Authorities – Implementation of Section 22 and Section 26 of the Childcare Act 2006

#### Introduction

1. The new duties under section 22 and section 26 of the Childcare Act require Local Authorities to shape and support the development of childcare provision in the local area in order to make it flexible, sustainable and responsive to the needs of the community.
2. The intention is to ensure that parents are able to access childcare locally that meets their needs and enables them to make a real choice about work. Local Authorities are best placed to understand and respond to local needs.
3. This guidance is intended to support Local Authorities in carrying out their duties under section 22 and section 26 and will provide:
  - background information;
  - information to which Local Authorities would have to have regard in relation to section 26 of the Childcare Act; and
  - non-statutory information such as information on funding.
4. A copy of the draft regulations “The Childcare (Local Authority Assessment) (Wales) Regulations 2007” is included in this consultation document at Annex B.
5. The wording of section 22 and section 26 of the Childcare Act is provided at Schedule 1 to this guidance.
6. The duty to secure sufficient childcare for working parents (section 22) and the duty to assess childcare provision (section 26) fit together, along with other duties under the Childcare Act, including the provision of information duty under section 27.

#### Background

7. The Welsh Assembly Government has set out its vision for children and young people in four key documents – *Children and Young People: A Framework for Partnership*; *Extending Entitlement: supporting young people in Wales*; *Children and Young People: Rights to Action* and *National Service Framework for Children, Young People and Maternity Services in Wales*. These are based on a number of core themes:
  - A foundation of principle in the UN Convention on the Rights of the Child.
  - Entitlement to services based on the needs of the child or young person.

- Listening to and acting on the views of children, young people and families.
  - Giving the highest priority to those most in need; and
  - A commitment to partnership working between different local organisations as the only way in which these aspirations can be achieved.
8. The Children Act 2004 and *Stronger Partnerships for Better Outcomes – Guidance on Local Co-operation under the Children Act 2004* sets out a framework within which Local Authorities should work - in partnership with the private, voluntary and independent sector – to improve the outcomes for children and young people and placing people and communities at the centre, enabling active participation in service planning and delivery.
  9. For these purposes, Local Authorities must plan and deliver integrated services, which must include family support and parenting services; relevant healthcare such as pre and ante-natal care; free nursery education; information and advice for parents of young children; and sufficient childcare provision in their area.

## **The Vision**

10. The strategic role which the Childcare Act places on Local Authorities, of which the childcare sufficiency assessment is one element, should be seen within the overarching framework for children and young people established under the Children Act 2004.
11. *Stronger Partnerships for Better Outcomes* outlines new partnership arrangements. From 2008, each Local Authority area will be required to have a children and young people’s plan covering all services for those aged 0-25 and maternity services, drawn up by the Children and Young People’s Partnerships, which are a statutory requirement under the Children Act 2004.
12. The role of the Early Years Development and Childcare Partnerships (EYDCPs) remains a statutory requirement under Section 118A of the School Standards and Framework Act 1988 (amended by the Education Act 2002). *Stronger Partnerships for Better Outcomes* did, however, offer the flexibility of the Children and Young People’s Partnership (CYPP) fulfilling the role of the EYDCP with appropriate membership. Against this background, the Early Years Development and Childcare Partnership (EYDCP), or CYPP as appropriate, will be responsible for ensuring fulfillment 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. You may wish to comment on this proposal at Annex D.
13. The EYDCP 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 local planning, allowing authorities through their EYDCPs to work effectively with local partners, including the private and voluntary sectors, to fill gaps in the market.

14. To fulfil its Childcare Act duty, the 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 EYDCP will compare this assessment of parents' demand for childcare with information about the current and planned availability of childcare places. The Children's Information Services in each Local Authority area are well placed to assist their EYDCP in this role.

## **Section 22 – Duty to secure sufficient childcare for working parents**

15. This guidance sets out the broad vision for each Local Authority to secure sufficient childcare to meet the needs of their areas. In determining whether the provision of childcare is sufficient the Local Authority will have regard to the needs of parents in their area for:
- The provision of childcare in respect of which the child care element of working tax credit is payable.
  - The provision of childcare which is suitable for disabled children.
  - The provision of childcare involving the use of the Welsh language.
16. Local Authorities are to have specific regard to the needs of these groups. Childcare for an area could not be judged as sufficient unless it meets the needs of the community in general, and these three groups in particular.
17. Local Authorities should consider the particular issues around access to childcare for black and other minority ethnic families, lone parents and those making the transition to work, including those training.
18. Local Authorities will also need to consider availability of childcare to support parents working a typical hours.
19. It is not the intention to oblige Local Authorities to meet the individual childcare needs of every working family, but to ensure that at a community level, the Local Authority is taking strategic action with its partners to address gaps in childcare. Local Authorities will be expected to support the development of childcare where there is sufficient parental demand that a childcare setting or a childminder could operate and be sustainable. Examples of how they could address gaps include:
- providing training and business support to childcare providers, to help providers run efficiently;
  - providing market information to providers;
  - supporting networks of and links between providers;
  - creating targeted incentives to address any gaps in the market.
20. This reflects existing best practice in Local Authorities.
21. Local Authorities are required to secure childcare of sufficient duration and reliability to enable parents to make a real choice about work. Local

Authorities are required to act to secure sufficient childcare that is registered by the Care Standards Inspectorate for Wales (CSIW).

22. The quality of these types of childcare is assured through the regulatory framework.
23. Local Authorities will be able to support other types of childcare if they determine there is a need, but will only be judged on the sufficiency of childcare identified above. The new childcare duty draws together many of the activities that local authorities already undertake as part of Cymorth.
24. The effect of the wording “*reasonably practicable*” within the Childcare Act is to allow the Local Authorities to take into account their resources and capabilities in making decisions about when to intervene to address gaps in the childcare market. Local Authorities will have to meet needs as far as they are able to within those constraints, but it allows for some flexibility – what might be practicable will depend on the particular circumstances of a Local Authority.
25. Local Authorities have the power to assist, and make arrangements with, any childcare provider or potential childcare provider.

## **Section 26 – Power to require Local Authority to assess childcare provision**

26. The new duty in the Childcare Act requires Local Authorities, through their EYDCPs, to ensure sufficient childcare to meet local needs (albeit for working parents, and only where this is “*reasonably practicable*”). However, childcare needs are not directly comparable to schooling – it is not a compulsory attendance service and each individual family will have particular childcare needs which will change over time. It would be inefficient to provide a childcare place for every child without finding out what individual parents want or need.
27. The aim is that the Local Authority’s assessment of the local childcare market should generate an overall picture of parents’ use of, and demand for childcare in the Local Authority area. The twin purpose of the Local Authority’s assessment of childcare provision must be to cover both demand and supply sides of the market locally. Through this analysis, Local Authorities and their partners will be able to identify gaps in childcare provision where parents’ needs are not being met.
28. When carrying out the assessment of parents need for, and availability of childcare provision, Local Authorities are to be pro-active in seeking the views of parents, children, providers and the wider local community, including representative groups. Local Authorities will need to take into account complaints from parents received since the last assessment. In addition, the Local Authority will be required to use other means to assess provision of, and need for childcare in their area, for example, neighbourhood level population, income and labour market data; information from Children’s Information Services and from Inspectorates, including the Care Standards Inspectorate for Wales (CSIW); as well as surveys of families and providers.

## What is a childcare sufficiency assessment?

29. The assessment is a measurement of the nature and extent of the need for, and supply of, childcare within each local area. It will help EYDCPs to identify where there are gaps in the market and - in consultation with parents, communities and employers - plan how to support the market to address them. It should form part of the overall needs assessment and consultation stages of the preparation and annual review of the Children and Young People's Plan.

## Consultation with key stakeholders

30. Effective consultation will be a core element of the sufficiency assessment and will give those with an interest in childcare an opportunity to highlight relevant issues or concerns. Local Authorities should consult the groups as prescribed in the draft regulations at Annex B as part of the process of assessment.
31. Childcare markets tend to be highly localised. The assessment will need to cover the whole Local Authority area and should take account of the pattern of demand and supply throughout. It should identify specific gaps for particular groups and of particular types of childcare in smaller geographical areas, to ensure that there is sufficient childcare across the Local Authority. These smaller geographical areas should be those that Local Authorities consider to be best suited for the purpose – for example, wards, primary school catchment areas, or other areas as designated by Local Authorities to help with the delivery of local services.

## Assessment Steps

32. Local Authorities will need to follow a series of steps when conducting their assessments:
  1. **Assessing the demand for childcare** in each Local Authority area, taking account of at least the following:
    - a. the number of childcare places required for children up to the age of 15 (or 18, for disabled children), broken down by age range and type;
    - b. the number of childcare places required in respect of which the childcare element of the Working Tax Credit may be claimed;
    - c. the number of free nursery education provision places required;
    - d. the times at which childcare is required, including demand for flexible childcare that caters for irregular patterns of usage across the day, the week and the year;

- e. the requirements for specialist childcare for disabled children and those with special educational needs; and
  - f. the requirements for Welsh medium and bilingual childcare (the definitions for the different types of settings are set out in Schedule 2 to this guidance).
2. **Assessing the supply of childcare** in each Local Authority area, taking account of at least the following:
- a. the number of childcare places available for children up to the age of 15 (or 18, for disabled children), broken down by age range and type;
  - b. the number of places available for which parents would be able to use the childcare element of the Working Tax Credit;
  - c. the number of free nursery education provision places available;
  - d. the times at which childcare is available, the maximum length of time that childcare providers will care for children in a day, and their flexibility in catering for irregular patterns of usage across the day, the week and the year;
  - e. the number of places available for children who need special care due to a disability or special educational need;
  - f. the number of Welsh medium and bilingual childcare places available (the definitions for the different types of settings are set out in Schedule 2 to this guidance);
  - g. the number of vacant and unused places;
  - h. the range of session lengths offered by childcare providers; and
  - i. the range of charges for childcare.
3. **Analysing the gap between demand and supply** in each Local Authority area, taking account of at least the following:
- a. the types of care available;
  - b. the age of children for whom care is available;
  - c. the affordability of childcare;
  - d. the times at which childcare is available, including the need for flexible childcare that caters for irregular patterns of usage across the day, the week and the year;
  - e. the specific needs of disabled children;

- f. the specific needs for Welsh medium and bilingual childcare provision; and
  - g. the location of childcare.
4. **Drafting an assessment document**, which includes the information in points a, b and c above, and then consulting the groups listed in the regulations on the content.
5. **Publishing a summary of the assessment:**
- a. on the Local Authority website; and
  - b. in hard copy in local public libraries, childcare settings, schools and other public places, as considered appropriate by the Local Authority.
33. Publication of the assessment should not take the form of a standalone document. It should form a section or annex of the Children and Young People's Plan (CYPP). **Local Authorities are required to complete their first assessment in 2007-08.** They should integrate this information within the process of assessing need and mapping provision as part of the Children and Young People's Plan (CYPP). The Local Authority will need to review the assessment as new childcare data becomes available and – as a minimum – at least every year. This should normally form part of the annual review of the CYPP. The full assessment process will need to be repeated at least every three years.
34. The following sections cover the different steps of an assessment in more detail.

### **Assessing the demand for childcare**

35. The EYDCPs should undertake a detailed investigation of their local childcare markets, in terms of both demand and supply, now and in the foreseeable future, to establish where there are gaps in provision. The sufficiency assessment will be a comprehensive and robust analysis of local childcare markets, which will enable the Local Authority confidently to plan the action needed to meet the duty to secure sufficient childcare.
36. When assessing demand, EYDCPs should focus on formal registered provision. They will need to develop some understanding of parents' use of informal or unregistered childcare as part of the context for assessing the sufficiency of formal childcare; but the main focus of the assessment should be on the registered sector because that is where Local Authorities are most able to influence the childcare market.

## Understanding the Area

37. The EYDCPs need a clear understanding of the **demographics of their local population**, in particular factors that will drive demand for childcare. These might include the under fives population, numbers of lone parents, ethnicity of the local population, and birth rates. The assessment should include the number of children requiring Welsh medium and bilingual provision, disabled children, ethnic minority children, looked after and foster children, and children from socially excluded groups, so that an accurate picture can be formed of demand by those groups. (It is a specific requirement of the Childcare Act that Local Authorities should have regard to the childcare requirements through the medium of Welsh and for disabled children aged up to 18).
38. The Local Authority will need to understand the **local labour market** and patterns of training and adult learning locally. Working patterns, including shift work and other work outside the core 8-6 working day, and commuting time will affect when childcare is needed. Changes in employment patterns – the opening, closure, expansion or shrinkage of sources of employment - may impact on parental work patterns and their demands for childcare, so should be factored into the assessment. The Local Authority should also take into account planned and proposed **property development** within the area which may affect population composition and density.

## Assessing Parental Demand

39. There are a number of possible methods a Local Authority could utilise to assess the needs and wishes of parents and carers for childcare which will enable them either to remain in, or enter, work.
40. Local Authorities should gather the views of parents or other carers who are not currently in work, as well as those who are employed or self-employed, in training or engaged in voluntary work; and include lower income families and those with disabled children. Local Authorities may also wish to take account of demand for childcare from parents living outside the area but who use provision within it. To establish such demand, Local Authorities might find it helpful to consult neighbouring authorities, or local employers.
41. It will be important to consider the types of childcare parents use and want (for example, full day care, out of school childcare, childcare with childminders). Local Authorities will need to take account of the fact that demand will be affected by the extent to which parents consider childcare to be 'reliable' (i.e. certain to be available every day, and for expected hours) and of suitable quality and affordability, because they are likely to be key factors in decisions about returning to work.
42. A good starting point would be the Local Authority's own Children's Information Service, which have considerable knowledge of the demand for childcare in the area and could be asked to gather such information systematically. Properly structured sample surveys (so that the varying nature of demand in different areas can be understood) are likely to provide the most

representative picture. They could be conducted by telephone or in person and supplemented by focus groups and/or face-to-face interviews. The latter are best for picking up the needs of particular groups, like parents of children with disabilities; parents not using childcare; and parents from minority ethnic groups. House to house work can also be helpful in building up in depth profiles of particular areas.

43. To allow the results of these surveys and interviews to be matched to local demographics, Local Authorities will also need to collect basic data on the characteristics of respondents, including:
- the employment/training status of parent/parents or other carer;
  - household income levels;
  - whether they are claiming the Child Tax Credit or the childcare element of the Working Tax Credit;
  - the ethnic background of families;
  - whether they are disabled;
  - whether they are Welsh speaking;
  - the age and number of children.

## **Working with Employers**

44. Local Authorities will need to take account of the views of employers, through surveys or group discussions, to obtain a better understanding of employment patterns which will affect demand for childcare. In addition, Local Authorities might find it helpful to engage in a dialogue with employers about how employer-provided childcare, encouragement of the take-up of tax credits, more flexible working patterns, and helping employees with the costs of childcare through allowances or vouchers could help with recruitment, retention and motivation.
45. To complement their work with employers, Local Authorities need to engage with Job Centre Plus locally about the childcare needs of people for whom they are seeking to find a place in the job market, and the extent to which access to appropriate and accessible childcare is a barrier to accessing training and work.

## **Price and Demand**

46. Local Authorities need to be aware of how price will affect parental demand for childcare, to inform their planning and the nature of provision. The assessment should first seek to establish demand at the 'current market price'. 'Current market price' means the price which parents would meet if they looked for childcare in the market today, and will vary by setting, age of

child and other factors. Parents should be asked about their childcare needs given the conditions they face in the market as it is.

47. However, because “sufficiency of provision” applies to the future as well as to the current position, Local Authority should also try to gain an understanding of how parents would be likely to react to changing prices, both increases and the availability of less costly provision. Local Authorities might ask their private and voluntary sector partners how they expect prices to change in the next year, and why.
48. To fulfil the sufficiency duty in Section 22 of the Childcare Act, Local Authorities will be expected to do what they can within their powers and resources to ensure that sufficient childcare is available to meet the needs of working parents, now and in the future. As part of this, Local Authorities will need to identify groups of parents who are finding it most difficult to access appropriate childcare at the current market price and who may face the greatest difficulties in future, and to consider what additional assistance can be given to them. This should include maximising take-up of the free entitlement, understanding where more affordable childcare is available, and offering subsidies where that is appropriate and reasonably practicable. Local Authorities also have an important role in publicising the financial support available through the childcare element of the Working Tax Credit and, where appropriate, providing advice and guidance to eligible families on how to access it.

## **Assessing the Supply of Childcare**

49. When preparing an assessment, Local Authorities will need to map the supply of childcare, so that they can identify any gaps. The Local Authority will need to measure accurately the supply of all types of formal childcare, including unregistered provision. It will need to assess the current level of provision of each type of care, in terms of hours of opening, the number of places offered by each provider, the age group it caters for, and the cost per hour, day and week.
50. In addition to quantifiable information, Local Authorities should take into account other factors which are relevant to deciding whether childcare is suitable and sustainable. The key indicator of suitability is of course registration with CSIW. Other indicators may include CSIW inspection reports, evidence of comprehensive business plans, and membership of a childminders’ network. Local Authorities should also consider how easy it is for parents to combine use of different providers to meet their needs. The mapping of supply should include consultation with providers on their capacity and plans, which will help the Local Authority with future planning.
51. The Local Authority will need to keep in mind the fact that it must ensure that certain nursery education provision is available free of charge for each young child in the area who has reached a prescribed age but is under compulsory school age.

52. Integrated children's centres will form an increasingly important part of a Local Authority's suite of children's services and in areas of disadvantage may be a significant provider of childcare. Local Authorities should ensure that existing integrated children's centres and plans for the development of new ones are considered when assessing the supply of childcare. They should also consider the scope of locating childcare on school sites, in the context of the community focused schools initiative.
53. The Local Authority will need to identify providers of childcare, both registered and unregistered, from a number of sources to be able to generate a complete picture of supply in its area. Data from CSIW registrations can be supplemented by Children's Information Service data and by other local knowledge.
54. The use of informal childcare will impact on the supply of, and demand for, childcare. Local Authorities will, of course, only be able to estimate its extent and influence on their childcare markets. This can be done through the Local Authority's survey of parents' use and demand for childcare as well as national level surveys such as *Childcare and Early Years Provision: A Study of Parent's Use, Views and Experiences* (DfTE Information Document No: 006-06 issued March 2006).

## **Analysing the Gap between Demand and Supply**

55. After assessing demand and mapping supply, Local Authorities will map supply to demand.
56. To assess where gaps exist, the Local Authority will need to compare two sets of data. The first set is data on how much, of what types, at what times, and in which localities, parents demand childcare, and whether there are any specific requirements these parents or children have. The second is how much childcare is available, at what price, in each locality, at each time, and whether that provision is able to meet any specific needs the parents or children may have.
57. Gaps in the market can be considered as falling into the following categories:
  - **Geographical Gaps:** where a geographical area has a general shortage of supply;
  - **Income Gaps:** where there is a shortage of affordable childcare for the income groups populating an area;
  - **Specific Need Gaps:** where there is a shortage of suitable places for disabled children, or children with other specific needs or requirements, including those from particular faiths or community groups;
  - **Time Gaps:** where there is a shortage of childcare at a time that parents would wish to use childcare;

- **Age Gaps:** where there is a shortage of childcare suitable to the needs and requirements of a certain age group (for example, school-aged children up to 18 years, if they are disabled). This may be difficult to detect if it is masked by over provision of childcare suitable for other age groups; and,
  - **Type Gaps:** where there is a shortage in the type of childcare for which parents may be expressing a preference.
58. Every gap will have a geographical element, which will need to be considered as part of the analysis. A local childcare market is generally considered to be a small area, which for very young children could be defined in terms of 'buggy-pushing distance'; but it may also be subject to limitation by physical constraints. For example, obstructions like motorways and railway lines can impose physical barriers between childcare markets; and there can also be non-physical barriers, such as a reticence to use provision in a different community, village or estate.
59. The Local Authority will need to have an understanding of how local provision effectively overlaps at community boundaries. Although it would be undesirable to encourage excess supply, some flexibility in capacity in such areas may be helpful.
60. Parents' choice of convenient childcare will sometimes mean that they take up places in a different Local Authority from their own. Accordingly, Local Authorities should, when conducting their assessment, take account of the needs of those who use childcare outside their area as well as those who travel to their area to use childcare. It might be helpful to consult local providers, employers and neighbouring Local Authorities to try to assess the numbers involved.

## **Supply side and demand side spending**

61. Investment in the childcare market is channeled through a range of funding streams, both to increase the supply and quality of local childcare and to provide purchasing power to parents to help make childcare more affordable. Spending on both the supply and demand side aims to increase parental choice – not only between different childcare providers, but also how modern families choose to balance their economic and caring roles.
62. Supply-side spending refers to funding that is channeled to the providers, e.g. currently through the Cymorth fund - rather than the users of childcare.
63. Demand-side spending refers to funding that is channeled to parents, as users of childcare, e.g. the childcare element of the Working Tax Credit and/or employer supported childcare – rather than to providers.

## **Tools to assist Mapping Supply to Demand**

64. A number of tools which are capable of carrying out the type of analysis required to map supply to demand are already available and in use by some Local Authorities. They allow the Local Authority to estimate demand in small geographical areas and match this against supply data. They can also be used in conjunction with the Index of Multiple Deprivation to map childcare sufficiency in the most deprived areas.

## **Drafting and Consulting on the Assessment**

65. When the Local Authority has completed the stages of assessing demand, mapping supply, and mapping supply to demand and has completed its assessment, it needs to prepare an 'assessment document' for later publication and consult on it prior to publication. The assessment document will be a summary of the information and data that has been collected through the sufficiency assessment process.

## **Format of the Assessment Document**

66. The assessment document should set out all of the outcomes at Local Authority level, together with a summary of the key gaps in childcare provision. (The underlying analysis will need to be available on request for anyone who wishes to see it.)
67. The assessment document should focus on identifying the largest and most serious gaps, the scale of which should generally be measured in terms of the number of families affected. It should be presented in an accessible and user friendly way that enables readers to see issues affecting how they access or provide childcare.

## **Consultation**

68. The consultation on the assessment document will form part of the consultation on the Children and Young People's Plan (CYPP). When it does, Local Authorities should refer to the Children and Young People's Partnership planning guidance for consultation arrangements so that the arrangements below apply only when there is a separate document.
69. The Local Authority will have consulted widely in making the assessment, in particular, during the stages of assessing demand, mapping supply and mapping supply to demand. Having prepared the assessment document, the Local Authority should now publish it for a further round of consultation so that parents, providers, employers and the wider community have an opportunity to comment on the assessment and highlight relevant issues of concern that may have been missed in the assessment. Local Authorities should be proactive in ensuring that all communities are able to take part in the consultation, including those who live in disadvantaged areas, minority ethnic groups, refugees and asylum seekers, all of whom may face particular issues

in accessing childcare. The consultation document should be made available in community languages where appropriate.

## **Consulting with Children**

70. It is important for Local Authorities to include within their consultation on the assessment an opportunity for local children to express their views on what they see as strengths, weaknesses and gaps in childcare. They are the main users and beneficiaries of childcare services, so it is vital that their needs and concerns are understood.
71. There are a number of approaches to consulting with children and Local Authorities should choose the most appropriate method depending on such factors as the age, gender, ethnicity and disabled status of children within their area.

## **Dissemination of the Draft Assessment for Consultation**

72. The draft assessment document should be sent, as appropriate, to the people and bodies as prescribed in the draft regulations at Annex B. It should also be made available for consultation through childcare settings, schools, Children's Information Services, public libraries, GP surgeries, Job Centre Plus offices, as well as Local Authorities' usual information channels. The draft assessment does not need to be a standalone document but can form a section or annex to any draft CYPP that is also subject to public consultation.

## **Publishing, Reviewing and Repeating the Assessment**

73. Following consultation on the childcare sufficiency assessment a Local Authority should consider how it will address the gaps identified and this should become an integral part of the process of review and publication of the CYPP.
74. It will be important that findings of assessments are made available to parents, providers and the wider general public. Local Authorities should distribute the findings of their assessments through usual information channels, including their Children's Information Service.

## **Reviewing and keeping the assessment up to date**

75. The Childcare Act requires Local Authorities to prepare an assessment at intervals not exceeding three years but also to keep it under review until it is superseded by a later one. Local Authorities should update the assessment whenever new data become available, but should do so at least annually as part of the review of the Children and Young People's Plan to ensure assessments are up-to-date.
76. Local Authorities are encouraged to use Live Birth Statistics to test the continuing accuracy of their assessment of demand as well as monitoring of accommodation and employment patterns which may affect population

compositions and densities and demand for childcare; as well as regularly testing their assessment of supply, including consultation with schools and with private, voluntary and independent providers.

77. There is no requirement for a Local Authority to repeat surveys of parents or other surveys, or other forms of consultation, at intervals of less than three years.

## **Complaints and appeals system**

78. Local Authorities will need to deal with any complaints made by parents, children, providers or the wider community, both about provision generally in the area and about individual providers. Where complaints relate to an individual provider, the Local Authority may act on the complaint where it relates to a maintained school, is a criminal matter (e.g. provider is banned from working with children), or a breach of health and safety regulations in which case it can be referred to the relevant authority. Breaches of regulatory requirements under Part XA of the 1989 Act may be referred to the Care Standards Inspectorate for Wales.
79. Any complaints made to the Local Authority about provision or providers in their area will have to be recorded and made available as part of the assessment of the duty. Where the complaint is about provision in the area generally, the Local Authority should use this as part of their assessment of provision.

## **Children whom duty is to cover**

80. The duty will be to secure sufficient childcare for children up to the September after the child turns 14 (the September after the child turns 18 for disabled children). The choice of age 14 reflects the commonly accepted view that this is the age at which most children can look after themselves for periods that allow parents to work. The age is extended for disabled children. Local Authorities will therefore secure sufficient care for children for the school year in which they are 13/14 (17/18 for disabled children).
81. To clarify:
- The Local Authority will not be under a duty to provide the childcare directly (although they will have the power to make provision if they wish). It is intended that formal childcare should in the main be provided by providers in the private and voluntary sectors and schools (both maintained and private).
  - The cost of childcare will be met by parents, with parents who are eligible being able to claim tax credits in respect of qualifying childcare.
82. Local Authorities are not to be under a general duty to fund childcare provision. The exception to this is childcare provision for children in need, which Local Authorities are under a duty to provide. The Assembly does not

wish to change the current position as far as this duty is concerned. Where Local Authorities choose to provide childcare, there will be no duty on them to fund that provision in any situation. However, Local Authorities may choose to subsidise childcare and provide free childcare for people outside these definitions if they wish.

83. When Local Authorities are carrying out their assessment to determine the existing state of childcare provision and whether this is sufficient to meet children's developmental needs and to enable parents to work and where the gaps are, Local Authorities are required to take account of all forms of care and activity which parents entrust children to, either before starting school or outside school for those of school age. The purpose of this assessment is to monitor the choices parents make in practice.

### **Meaning of “Affordability”**

84. Affordability is difficult to define universally.
85. Childcare services have been made more affordable for more families because of additional supply-side and demand-side funding. Supply-side spending has increased the numbers of places available and attempted to reduce the structural costs of childcare. However, despite investment in developing the capacity and infrastructure of the childcare market, fees to parents have increased rapidly and remain high in some sectors. So, while supply has increased, demand has grown faster, and “operating costs” are high and still rising.
86. Affordability is clearly a concern across the whole childcare market and Local Authorities will need to be aware of the key groups who are missing out, despite them often needing the most assistance in accessing appropriate childcare:
- Children living in workless households
  - Children living in large families
  - Lone parent families
  - Working families on low incomes
  - Families facing high cost barriers –
    - Children with disabilities or special educational needs
    - Very young children
    - Living in high-cost areas
    - Living in rural communities
    - Parents working atypical hours
  - Children from black and minority ethnic families

### **Meaning of “Quality”**

#### **CSIW role**

87. In Wales, the regulator of childcare for the under 8 age group is the Care Standards Inspectorate for Wales, an arm of the Assembly Government.

The CSIW already have a responsibility to undertake an inspection process for childcare for children under 8, which is maintained through the Act. This ensures that the robust national minimum quality standards in childcare which are already in place are achieved and maintained.

## **Local Authority role**

88. Local Authorities have a role to play with regard to quality, specifically in terms of driving up quality (such as through improving the qualifications, skills and pay of the childcare workforce) and providing information, advice and high-quality training. However, in terms of undertaking a formal assessment of quality, this is role for CSIW, through their inspections of registered provision. The inspection judgments awarded by CSIW offer periodic review and opportunity to improve quality levels locally. Local Authorities will not be required to duplicate the CSIW role.
89. Local Authorities will be able to access CSIW's inspection judgments, and feed these into the needs assessment.
90. Local Authorities in Wales are expected to focus on commissioning from high quality providers and facilitating the market so that those providers thrive and grow. Their role is to offer parents ever greater choice and diversity of provision, which meets high quality standards.

## **Funding**

91. Rising levels of resource to support the development of childcare have been flowing to Local Authorities and their partners since the introduction in 2003 of Cymorth – the Children and Youth Support fund. From 2006-07, we have indicated that a minimum of 8.5% of each partnership's total Cymorth allocation should be invested in projects with childcare as the main theme, together with Children's Information Services. The existing Children's Information Services in Wales are accommodated within the Cymorth programme provision of £56.733 million in 2006-07 and an indicative budget of £59.562 million in 2007-08, which have already been made available, within the Cymorth including Childcare BEL.
92. This approach was appropriate in the early phases of service development, but under the Childcare Act, from April 2008, childcare and children's information services will be supported by statutory duties. These challenges require greater flexibility and scope for locally determined action.
93. The intention is that from 2008-09 it will be appropriate to transfer the Cymorth funds relating to childcare and children's information services to Revenue Support Grant (RSG). The remainder of Cymorth (including support to integrated centres) will then move progressively over to RSG over the three financial years starting 2011-12, by transfers of resources of one third each year. The Welsh Assembly Government and the WLGA have agreed a timetable for the transfer of Cymorth into RSG.

94. No final decision has been made regarding the amount of money to be transferred, nor how this will break down between Local Authorities. Proposals are currently being discussed with the WLGA, through its Distribution Sub-Group and Partnerships. We intend to issue guidance under the Childcare Act 2006 on spending this money and seek your views on how this should be done. Please see Annex D.
95. The Welsh 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 aim is to enable Local Authorities and their partners to respond to parents' need for affordable childcare and for easy access to children's 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.
96. 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.

## Schedule 1

Section 22 and section 26 of the Childcare Act 2006 state:

### 22. Duty to secure sufficient childcare for working parents

- (1) A Welsh local authority must secure, so far as is reasonably practicable, that the provision of childcare (whether or not by them) is sufficient to meet the requirements of parents in their area who require childcare in order to enable them –
  - (a) to take up, or remain in, work, or
  - (b) to undertake education or training which could reasonably be expected to assist them to obtain work.
- (2) In determining for the purposes of subsection (1) whether the provision of childcare is sufficient to meet those requirements, a local authority –
  - (a) must have regard to the needs of parents in their area for:
    - (i) the provision of childcare in respect of which the child care element of working tax credit is payable,
    - (ii) the provision of childcare which is suitable for disabled children; and
    - (iii) the provision of childcare involving the use of the Welsh language.
  - (b) may have regard to any childcare which they expect to be available outside their area.
- (3) In discharging their duty under subsection (1), a local authority must have regard to any guidance given from time to time by the Assembly.
- (4) The Assembly may by order amend subsection (2) (and subsection (6) so far as relating to that subsection) 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.
- (5) Except in relation to a disabled child, this section does not apply in relation to childcare for a child on or after the 1 September next following the date on which he attains the age of 14.
- (6) In this section –

“child care element”, in relation to working tax credit, is to be read in accordance with section 12 of the Tax Credits Act 2002 (c.21);

“disabled child” means a child who has a disability for the purposes of the Disability Discrimination Act 1995 (c.50);

“parent” includes any individual who –

- (a) has parental responsibility for a child, or
- (b) has care of a child.

**26. Power to require local authority to assess childcare provision**

- (1) The Assembly may by regulations require a Welsh local authority to –
  - (a) prepare assessments at prescribed intervals of the sufficiency of the provision of childcare (whether or not by them) in their area;
  - (b) review any such assessment prepared by them.
- (2) Regulations under subsection (1) may make provision for the manner in which an assessment or review is to be prepared and, in particular, may require the local authority to –
  - (a) consult such persons, or persons of such a description, as may be prescribed, and
  - (b) have regard to any guidance given from time to time by the Assembly.
- (3) Subsection (5) of section 22 applies for the purposes of this section as it applies for the purposes of that section.

## **Schedule 2**

### **Definition of Welsh medium and bilingual settings**

#### **Welsh Medium Setting**

Welsh is the language of the setting. Welsh is the language of all activities, and is the language of communication with all children and young people. It is also the language of the setting's administration. The setting communicates with parents either in Welsh or in both Welsh and English according to parental preference.

#### **Welsh Medium and English Medium Setting**

Both Welsh and English are used as languages within the setting. With some children and young people Welsh is the language of communication and is the language of all activities. For other children and young people English is the language of communication, and is the language of all activities. Both languages are used for the setting's administration. The setting communicates with parents either in Welsh or in both Welsh and English according to parental preference.

#### **Bilingual Setting**

Both Welsh and English are used as languages within the setting. Welsh and English are used as languages of communication with the children and young people and both languages are used for activities. Both languages are used for the setting's administration. The setting communicates with parents either in Welsh or in Welsh and English according to parental preference.

#### **Predominantly English Medium Setting with some use of Welsh**

English is the main language of the setting. English is the language of the majority of activities, and is the main language of communication with all children and young people. Some Welsh is introduced to all children and young people through the use of greetings, songs, stories and games. The proportion of Welsh used varies according to the linguistic ability of the staff. English is the language of the setting's administration. The setting communicates with parents in English.

#### **English Medium Setting**

English is the language of the setting. English is the language of all activities, and is the language of communication with all children and young people. It is also the language of the setting's administration. The setting communicates with parents in English.



**THE NATIONAL ASSEMBLY FOR WALES**

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**STATUTORY INSTRUMENTS**

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**2007 No. (W. )**

**CHILDREN AND YOUNG PERSONS, WALES**

The Childcare (Local Authority Assessment) (Wales) Regulations  
2007

Explanatory Note

(This note is not part of the Regulations)

These Regulations set out the required content of the local authority assessment of childcare in its area. This includes both the requirements for childcare and the availability of childcare in its area. The Regulations also set out the persons and bodies that the local authority must consult and the manner in which the assessment must be published.

**2007 No. (W. )**

**CHILDREN AND YOUNG PERSONS, WALES**

**The Childcare (Local Authority Assessment) (Wales) Regulations  
2007**

*Made* - - - - - *25 September 2007*

*Coming into force* - - - - - *1 April 2008*

The National Assembly for Wales, in exercise of the powers conferred by section 26 of the Childcare Act 2006<sup>(1)</sup>, makes the following Regulations:

**Title, commencement and application**

1.—(1) The title of these Regulations is The Childcare (Local Authority Assessment) (Wales) Regulations 2007 and they come into force on 1 April 2008.

(2) These Regulations apply in relation to Wales .

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Childcare Act 2006;

“assessment” means the assessment carried out by a local authority under section 26(1) of the Act;

“childcare” means care which is required to be registered under part 10A of the Children Act 1989<sup>(2)</sup> or care which would be required to be registered under part 10A but for the fact that it is provided for a child aged 8 or over;

“childcare provider” means any person who provides childcare;

“free nursery education” means provision which is made under arrangements between the provider and the local authority in pursuance of the local authority’s duty under section 118 of the School Standards and Framework Act 1998<sup>(3)</sup>

“local authority’s partners” means the relevant partners as defined in section 25 of the Children Act 2004<sup>(4)</sup> and NHS Trusts and Local Health Boards for an area or any part of which falls within the area of a local authority, the National Assembly for Wales in respect of any functions it can exercise under section 2 of the Employment and Training Act 1973<sup>(5)</sup> and JobCentre Plus;

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(1) 2006 c.21  
(2) 2004 c.41  
(3) 1998 c.31  
(4) 2004 c.31  
(5) 1973 c.50

“session length” means the maximum period of time for which a childcare provider will care for a child in a day;

- (2) In these Regulations, the age ranges are—
- (a) ages 2 and under;
  - (b) ages 3 and 4;
  - (c) ages 5, 6 and 7;
  - (d) ages 8, 9 and 10;
  - (e) ages 11, 12, 13 and 14; and
  - (f) in relation to disabled children only, ages 15, 16 and 17.
- (3) In these Regulations, the types of childcare are—
- (a) childminding;
  - (b) full day care;
  - (c) sessional care;
  - (d) out of school care; and
  - (e) creches

#### **Matters to be contained in the assessment**

- 3.—(1) The assessment must include in respect of each local authority area details of—
- (a) the number of free nursery education places required;
  - (b) the number of free nursery education places available;
  - (c) in respect of each type of childcare and each age range—
    - (i) the number of places required;
    - (ii) the number of places available;
    - (iii) the number of places required in respect of which the childcare element of working tax credit may be used;
    - (iv) the number of places available for which parents would be able to use the childcare element of the working tax credit;
    - (v) the times at which the childcare is required;
    - (vi) the times at which the childcare is available;
    - (vii) the range of session lengths offered by childcare providers;
    - (viii) the requirements for specialist care for disabled children and those with special educational needs;
    - (ix) the number of places available which are suitable for children who have special educational needs or who require specialist care due to a disability;
    - (x) the number of Welsh language and bilingual childcare places required;
    - (xi) the number of Welsh language and bilingual childcare places available;
    - (xii) the number of vacant and unused places; and the range of charges for the childcare.
- (2) The assessment must include a summary of childcare needs which are not met in the local authority area including those which relate to the—
- (a) types of care available;
  - (b) age of children for whom care is available;
  - (c) affordability of childcare;
  - (d) times at which childcare is available;

- (e) specific needs of disabled children;
- (f) availability of Welsh language and bilingual childcare; and
- (g) location of childcare.

### **Consultation**

4. In preparing the assessment, the local authority must consult such—

- (1) children;
- (2) parents;
- (3) childcare providers;
- (4) persons representing children, parents and childcare providers;
- (5) persons with an interest in childcare and persons representing those with an interest in childcare;
- (6) persons representing local employers and employer organisations;
- (7) local employers;
- (8) neighbouring local authorities;
- (9) schools; and
- (10) further education colleges

in the local authority area as it considers appropriate.

5. In preparing the assessment, the local authority must consult—

- (1) the Local Safeguarding Children Board; and
- (2) the local authority's partners.

### **Draft summary**

6. Prior to publishing a summary of the assessment under regulation 8, the local authority must make generally available a draft of the summary of the assessment which they propose to publish for the purpose of allowing the persons listed in regulations 4 and 5 the opportunity to comment on the draft.

7. The local authority must amend the draft summary of the assessment in such way as they consider appropriate in response to any comments received by virtue of regulation 6.

### **Publication of Assessment**

8. The local authority must publish a summary of the assessment on the local authority website.

9. The local authority must deposit copies of the summary of the assessment in such public libraries, childcare settings, schools and other public places as they consider appropriate.

10. The summary of the assessment must include—

- (1) the information specified in regulation 3(1) in respect of the local authority area ; and
- (2) the information specified in regulation 3(2).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 2006.

The Presiding Officer of the National Assembly for Wales

## **Annex C**

### **REGULATORY IMPACT APPRAISAL - The Childcare (Local Authority Assessment) Regulations 2007**

#### **Purpose and intended effect of the measure**

1. The Assembly Government believes that quality childcare and early years education services can be important factors in helping children to reach their full potential; families to access appropriate support services; and parents wanting to return to work.
2. In order to ensure that these services are placed on a long term footing, we propose that the 22 Local Authorities in Wales will be placed under duties to fulfil provisions of the Childcare Act 2006, in particular:
  - section 22 (the duty to secure sufficient childcare to meet the needs of working parents and parents making the transition to work in the Local Authority's area);
  - section 26 (the duty to undertake a childcare sufficiency assessment); and
  - section 27 (to extend the existing duty on Local Authorities so that the range of information for families on childcare and children's services is broadened).

#### **Background**

3. Currently section 118A (2) of the School Standards and Framework Act 1988, (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.
4. Against this background, it is proposed that the Early Years Development and Childcare Partnership (EYDCP), which remains a statutory requirement under Section 118A of the School Standards and Framework Act 1988 (amended by the Education Act 2002), within each Local Authority is 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 EYDCP 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 local planning, allowing authorities through their EYDCPs to

work effectively with local partners, including the private and voluntary sectors, to fill gaps in the market.

5. To fulfil its Childcare Act duty, the 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 EYDCP will compare this assessment of parents' demand for childcare with information about the current and planned availability of childcare places. The Children's Information Services in each Local Authority area are well placed to assist their EYDCP.
6. The proposals detailed above tie in with the new 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 from 2008-11, setting out how the well-being of all children and young people in the area will be improved. Planning guidance will be issued in the summer of 2007, following consultation early that year.
7. 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. It is proposed that the first draft CYPPs are produced in May 2008. It is also proposed that review of Plans takes place annually, and that the Assembly Government is informed of any changes made.
8. 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 any under-pinning regime is that it should provide assurance of a long-term commitment to childcare without creating new administrative burdens or service costs for Local Authorities.

## Options

9. The childcare strategy "Childcare is for Children" outlines the progress that has already been made in childcare. This progress, delivering an additional net 18,500 new registered places since 1999, has laid a solid foundation of services and support for parents. To achieve good outcomes for children there is a need to ensure that childcare is properly joined up with other services and that, as local needs change and develop, the childcare market responds.
10. The childcare market is moving forward and grows year by year, but still demonstrates a high turnover of providers. The Assembly Government's aim is to consolidate the market, allowing Local Authorities greater flexibility over the spending of their childcare money, incentivising and supporting the local stock of childcare to ensure sustainability. Local Authorities retain the ability to continue to fund childcare place creation where there is an unmet demand, although the majority of provision will continue to be provided by the voluntary and private sector. The sector is expected to grow around and utilise the facilities of integrated children's centres and community focused schools, with

voluntary and private providers providing the childcare in many of these settings. Where gaps in the market exist, Local Authorities will be expected to continue to take the sort of action that they already take, including providing training and business support to providers to help them run efficiently; providing market information to providers; and supporting networks and links between providers.

11. We have identified two options in assessing how to best achieve the desired outcomes stated above:
  - To make these 2007 regulations and place new duties on Local Authorities to ensure the provision of childcare.
  - To maintain the status quo and not make these regulations and rely on existing duty under the Education Act 2002 and non statutory levers to incentivise and direct the national provision of childcare.

### **Option 1 – To make these 2007 regulations in order to broaden the current duty on Local Authorities to assess the sufficiency of childcare**

#### **Risk Assessment**

12. The Assembly Government makes these regulations in order to ensure sufficiency of childcare provision for working parents. Risks in this approach have been identified around:
  - The enhanced duties would put additional pressure on existing staff in some Local Authorities.

#### **Benefits**

13. 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 and parents of disabled children are taken into account by Local Authorities.
14. 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.

15. 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.
16. 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.
17. 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. As a legislative function this role would be subject to children and young people's local planning requirements and integrated inspection procedures under the Children Act 2004.
18. 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.
19. 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.
20. Cymorth funding for childcare and Children's Information Services (currently 8.5% of the Local Authority's allocation) will be included within the Revenue Support Grant to Local Authorities by 2008, making them a key player in the childcare market. 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.

21. 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**

22. 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 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.
23. From 2006-07, we have indicated that a minimum of 8.5% of each partnership's total Cymorth allocation should be invested in projects with childcare as the main theme, together with Children's Information Services. The existing Children's Information Services in Wales are accommodated within the Cymorth programme provision of £56.733 million in 2006-07 and an indicative budget of £59.562 million in 2007-08, which have already been made available, within the Cymorth including Childcare BEL.
24. The intention is that from 2008-09 it would be appropriate to transfer the Cymorth funds relating to childcare and children's information services to Revenue Support Grant (RSG). The remainder of Cymorth (including support to integrated centres) will then move progressively over to RSG over the three financial years starting 2011-12, by transfers of resources of one third each year.
25. The introduction of the regulations, therefore, 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**

26. The Assembly Government could choose not to make these regulations, but instead continue to use existing statutory levers under the Education Act 2002, supported by Cymorth guidance, in order to ensure the sufficient provision of childcare for working parents. Risks in this approach have been identified around:

- This approach would fail to provide certainty around the future provision of childcare services as they would continue to have no basis in law.
- Private and voluntary sector providers would continue to provide childcare services as they do at present, seeking support from short term grants.
- The absence of certainty that these services will continue to be supported over an extended period of time may deter providers from investing in services and facilities in the long term.

## **Benefits**

27. A non-statutory approach would have the advantage of using existing procedures to ensure the aim of providing sufficient childcare to meet the needs of working parents. It would be reliant on using existing Local Authority procedures for children's services to drive childcare services, along with the existing provisions supported by Cymorth guidance for childcare.
28. 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 well, but Cymorth funding is intended to fund services in deprived areas across Wales.

## **Costs**

29. 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. From 2008, a key issue will be requirement for each Local Authority to undertake an assessment of local need for such services as required under the Children Act 2004 and the Assembly Government's intention is to give greater flexibility to Local Authorities in how they discharge their duty. 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**

30. 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**

31. 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.

32. 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**

33. 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, sole traders to larger chains
  - Children and their families in Wales

## **Public Consultation**

34. The childcare strategy "Childcare is for Children" published in November 2005 outlined the Assembly Government's plans to ensure that every child in Wales gets the best start in life and to improve parents' choice about how to balance work and family life. The actions outlined in the strategy included plans to place a new duty on Local Authorities to secure sufficient childcare in their area and to improve the provision of information to children and families.
35. "Childcare is for Children" was subject to a full public consultation, and responses received included those from Local Authorities and the voluntary sector childcare representative organisations.
36. Children's Strategy Division holds a number of quarterly meetings with key stakeholders to discuss the nature of the role of the Local Authorities in facilitating and shaping the childcare market and their interactions with childcare providers.
37. Views from the formal and informal exercises that have already taken place have been taken into account in developing these proposals. Responses to this consultation on the proposed guidance to Local Authorities and draft regulations, including this Regulatory Impact Assessment, will be analysed and will inform final policy direction and guidance to Local Authorities.

## **Significant Costs**

38. There will be no significant costs arising from the proposed regulations.

## **Monitoring and Review**

39. Assembly 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 these 2007 regulations in order to broaden the current duty on Local Authorities to assess the sufficiency of childcare provision within their area**

40. ***We recommend this model.***
41. 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.
  - Local Authorities' responsibilities for providing information to parents and prospective parents to support them in their parenting role.
42. 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.
43. 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.
44. It is therefore recommended that agreement in principle is given to these regulations being introduced for the reasons outlined above.

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

45. There are no additional costs but this option will not broaden the range of childcare provision available to families to support them in their parenting role. However, it will disadvantage some parents in Wales who live in Local Authority areas adopting the narrowest interpretation of the existing provision of childcare duty under the Education Act 2002. It is also 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 to transfer the Cymorth fund to Revenue Support Grant in future years.