

Childcare Funding (Wales) Bill

Committee Stage 1 Report

July 2018



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About the Committee

The Committee was established on 28 June 2016 to examine legislation and hold the Welsh Government to account by scrutinising its expenditure, administration and policy matters, encompassing (but not restricted to): the education, health and well-being of the children and young people of Wales, including their social care.

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Recommendations

Recommendation 1. That the Welsh Government, as a matter of course, share all information detailing the grounds on which UK Government consent is provided to a Bill with Assembly committees. This information should be shared on the Bill's introduction (or as soon as it becomes available if consents are not gained in advance of introduction) to enable full and appropriate scrutiny of a Bill's provisions..... Page 13

Recommendation 2. That the Welsh Government, in advance of the Stage 1 debate, outline its understanding of the “separate agreements” that would be required between itself and HMRC should the current proposed childcare offer change..... Page 14

Recommendation 3. That the National Assembly agree the general principles of the Childcare Funding (Wales) Bill. Llyr Gruffydd AM does not support this recommendation on the grounds outlined in paragraph 57 of this report....Page 25

Recommendation 4. That the Welsh Government make available, before the start of Stage 3, the results of the evaluation of the childcare offer pilot to inform Members' tabling and consideration of amendments..... Page 31

Recommendation 5. That the Welsh Government does not finalise the detail of the regulations that will be made under this Bill until the findings of the evaluation of the childcare offer pilots have been fully analysed and published.
.....Page 31

Recommendation 6. That the Bill be amended to require the Welsh Ministers to make the administrative scheme by subordinate legislation, to ensure that it is placed on a statutory footing..... Page 34

Recommendation 7. That the Bill be amended to extend its provisions beyond working parents, to include parents who are seeking work by undertaking education and training linked to securing employment, to be defined in regulations..... Page 40

Recommendation 8. That the Bill be amended to provide the Welsh Ministers with a regulation-making power to extend its provisions to other categories of parent in the future. Any such regulations should be subject to the super-affirmative procedure..... Page 41

Recommendation 9. That the Bill be amended to require the Welsh Ministers to fund childcare for qualifying children of working parents for, or for a period equivalent to, 30 hours in each of 48 weeks in any year (to include the early years education already funded through local authorities). The Bill should also include provision enabling the amount of childcare to be amended in the future by regulations subject to the super-affirmative procedure..... Page 42

Recommendation 10. That the Welsh Government keep under review the age of the “qualifying children” to whom the Bill’s provisions should apply. This is with a view to ensuring that either:

- the Bill can be amended at a later stage to include the details of the age of a “qualifying child”, if the evidence received from the evaluation of the pilot is unequivocal; or
- the eligibility regulations reflect the lessons learned in the specified age of the “qualifying child”, if the results of the evaluation are ambiguous in this regard.Page 44

Recommendation 11. That the Bill be amended to require regulations made under it to make provision for a temporary exemption period (also referred to as a “TEP” or “grace period”)..... Page 45

Recommendation 12. That the Bill be amended to provide that:

- regulations made under section 1 should be subject to a super-affirmative procedure rather than the affirmative procedure; and
- any revisions to regulations made under section 1 should be made using the super-affirmative procedure.Page 48

Recommendation 13. That the Welsh Government work with HMRC to outline, before the Stage 1 debate, what arrangements will be in place to ensure that HMRC is able to deliver a fully bilingual application and eligibility checking system (both online and on the telephone) under the provisions of this Bill..... Page 53

Recommendation 14. That the Welsh Government produce a revised Regulatory Impact Assessment should the eligibility criteria for access to funding of childcare change from those outlined on the face of the Bill and in the Explanatory Memorandum. This work should be undertaken and published in time to inform Members’ consideration of the Bill at later stages or, if decisions are not made on eligibility until the Bill has completed its passage through the Assembly, in time to inform the scrutiny of the relevant regulations.Page 54

Recommendation 15. That the Welsh Government make more explicit its commitment to ensuring that the risks of digital exclusion are addressed, managed and monitored as part of any agreement with any delivery agent for the administration of the application and eligibility checking system created by this Bill.Page 55

Recommendation 16. That the Welsh Government work with HMRC and local authorities to outline, before the Stage 1 debate, what arrangements will be put in place to ensure that HMRC is able to signpost clearly parents to the other support they may be eligible to access. This should include an assessment of the feasibility (in terms of timescales, costs and clarity of information) of updating HMRC's Childcare Choices website to include details of the Welsh offer.Page 62

Recommendation 17. That the Welsh Government make available, before the start of Stage 3, a revised Child Rights Impact Assessment (CRIA). This CRIA should consider the Bill's impact on *all* children, not just those eligible under its provisions for the childcare offer. This is particularly important in light of the Children's Commissioner's concerns that an unintended consequence of the Bill's focus on qualifying children of working parents could be an increase in the child development, school readiness and educational attainment gap between our most advantaged and disadvantaged children.....Page 65

Recommendation 18. That the Welsh Government ensure that, as part of the evaluation of the childcare offer pilot's roll-out, information to assess the impact of its arrangements on summer-born children is gathered, analysed, and used to inform the shape of the childcare offer that is eventually rolled out nationally.Page 66

Recommendation 19. That the Welsh Government set out in advance of the Stage 1 debate:

- how the number of children that would be eligible in terms of their parents working was calculated to be 40,000, as stated in the Explanatory Memorandum; and
- whether an attempt was made to estimate the number of children who would be eligible in the term after their third birthday, or whether only the total number of three year olds (plus four year olds) was used.Page 68

Recommendation 20. That the Welsh Government ensure that any new obligations imposed on local authorities in relation to this Bill are accompanied by the necessary amount of funding to deliver them.Page 70

Recommendation 21. That the Welsh Government set aside a proportion of its budget for the childcare offer to provide additional support between now and the offer's roll-out to facilitate an increase in the co-location of childcare and early years education provision. This should include incentives for the non-maintained sector to increase its provision of early years education..... Page 79

Recommendation 22. That the Welsh Government undertake a review of the cost/rates of payment across maintained and non-maintained settings for childcare, early years education, and the childcare element of Flying Start. Particular attention should be given to increasing the consistency between the hourly rate paid for early years education and childcare. Page 80

Recommendation 23. That the Welsh Government issue revised guidance to local authorities defining the meaning of “sufficient nursery education”, to guard against any risk of less than the current amount of early years education being offered by each local authority once the childcare offer is in place. Page 80

Recommendation 24. That the Welsh Government work with Care Inspectorate Wales and Estyn to reflect and implement the lessons learned from the evaluation of the joint-inspection framework, with a view to considering more streamlined arrangements. Page 80

Recommendation 25. That the Welsh Government, in advance of the Stage 1 debate, accept the Equality, Local Government and Communities Committee's recommendations relating to the childcare offer in its report on its inquiry into pregnancy, maternity and work. Page 83

Recommendation 26. That the Welsh Government remove the right for providers to apply additional charges.....Page 85

Recommendation 27. That the Welsh Government assess, as a matter of priority, how many providers are applying additional charges within the existing Early Implementer Local Authorities (EILAs) and for what reason.Page 85

Recommendation 28. That the Welsh Government consider, based on learning from the EILAs about the extent to which additional charges are being applied by providers, raising the proposed hourly rate of £4.50 if necessary for providers' sustainability and to ensure they are reimbursed for the true cost of their provision.....Page 85

Recommendation 29. That the Welsh Government outline, in advance of the Stage 1 debate, the discussions it has held with HMRC about the likely costs and timescales associated with any change to the income cap, and the basis on which the Minister has stated that such a change could be possible in future.Page 88

Recommendation 30. That the Welsh Government roll out the childcare pilot offer to a handful of the more affluent wards within existing EILAs, to test the extent to which the offer remains one that is taken up largely by those earning less than the median average salary.Page 88

Recommendation 31. That the Welsh Government, based on the findings of the forthcoming evaluation (and, if accepted, any data emerging as a consequence of recommendation 30), review the income cap of £100,000 per parent.Page 88

Recommendation 32. That the Welsh Government monitor closely the take up of the childcare offer pilot in EILAs and publish detail of the expenditure from March – August 2018 in advance of the Stage 1 debate in September.....Page 89

Recommendation 33. That the Welsh Government, as a matter of urgency, reconsider the ability of schools to deliver the full childcare offer directly.Page 92

Recommendation 34. That the Welsh Government make public the findings of its review of the Child Minding and Day Care Exceptions (Wales) Order 2010 before the start of Stage 3, to inform Members’ tabling and consideration of amendments.....Page 92

Recommendation 35. That the Welsh Government ensure an appropriate balance is struck between capital support for both the maintained and non-maintained sectors.Page 93

Recommendation 36. That the Welsh Government respond in detail to Social Care Wales’s calculations of the workforce deficit as detailed in paragraph 324 of this report. This response should be provided before the Stage 1 debate, to inform Members’ consideration of the extent to which the Bill’s stated purpose of encouraging more people back to work will be affected if the sector does not have the capacity to deliver childcare to all eligible families.Page 99

Recommendation 37. That the Welsh Government, in accordance with the Welsh Language Commissioner’s recommendations, work to integrate the childcare offer with the Cymraeg 2050 strategy, use Welsh in Education Strategic Plans (WESPs) to specify targets in relation to Welsh language childcare provision, and reform the way childcare data is collected and shared to ensure that all planning is based on reliable information.....Page 99

1. Introduction

1. On 16 April 2018, Huw Irranca-Davies AM, Minister for Children, Older People and Education (the Minister), introduced the Childcare Funding (Wales) Bill (the Bill) and accompanying Explanatory Memorandum. The next day, the Minister published a Statement of Policy Intent in relation to the Bill and made an oral statement in Plenary in which he explained:

“The Bill, although technical in nature, will make it possible for the Welsh Government to put in place a national application and eligibility checking system to support the childcare offer in Wales.”¹

2. At its meeting on 13 March 2018, the National Assembly’s Business Committee agreed to refer the Bill to us, the Children, Young People and Education Committee, for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that we should report by 6 July 2018.²

3. In light of the significant amount of evidence received relating to the Welsh Government’s childcare offer, and its relevance to the Bill’s overarching aims as detailed in the Explanatory Memorandum, we requested an extension to the timetable for our scrutiny of the Bill’s general principles. The Business Committee agreed a revised reporting deadline of 18 July 2018.³

1.1. Terms of reference

4. We agreed the following framework within which to scrutinise the general principles of the Bill:

To consider:

- the general principles of the Childcare Funding (Wales) Bill and whether there is a need for legislation to deliver the Bill’s stated policy objectives;
- any potential barriers to the implementation of the key provisions and whether the Bill takes account of them;

¹ Penary, 17 April 2018, Record of Proceedings (“RoP”) [para 186]

² Business Committee, Report on the timetable for consideration of the Childcare Funding (Wales) Bill, April 2018

³ Business Committee, Report on the revised timetable for consideration of the Childcare Funding (Wales) Bill, June 2018

- whether there are any unintended consequences arising from the Bill;
- the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum), and
- the appropriateness of the powers in the Bill for the Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum).

5. We conducted a public consultation between 20 April and 18 May 2018 to inform our scrutiny, receiving 21 written responses (see list at Annex A). We held nine oral evidence sessions during May and June 2018, the schedule of which is provided in Annex B. We would like to thank everybody who contributed to our work.

1. 2. Other committees' consideration of the Bill

6. The National Assembly's Finance Committee took evidence from the Minister on the financial implications of the Bill on 13 June 2018, publishing its report on 16 July 2018.

7. The National Assembly's Constitutional and Legislative Affairs Committee took evidence from the Minister on the appropriateness of the provisions in the Bill that grant powers to make subordinate legislation on 14 May 2018. Its report was published on 28 June 2018.

2. Legislative competence

The Childcare Funding (Wales) Bill is the first to be introduced under the provisions of the Wales Act 2017. This Act creates a reserved powers model of legislative competence for Wales by amending the Government of Wales Act 2006.

2. 1. General

8. The Welsh Government is satisfied that the Bill is within the legislative competence of the National Assembly. Its position is set out in paragraphs 2.1 to 2.11 of the Explanatory Memorandum.

2. 2. The Llywydd's statement and Secretary of State consents

9. On 16 April 2018, the Llywydd issued her statement on legislative competence. She noted that sections 4(2), 4(5)(b), (c) and (d), and 5(3) would not be within competence because these provisions require the consent of the relevant Secretary of State to bring them within the National Assembly's competence and this had not been obtained at the time of introduction.

10. Officials accompanying the Minister confirmed that consent had been received from the Chief Secretary to the Treasury on behalf of Her Majesty's Revenue and Customs for sections 4(1), 4(5)(a) and 9 of the Bill.⁴ They stated that advice on the remaining consents was with the Home Secretary and Secretary of State for Work and Pensions respectively.⁵ The Minister confirmed he was confident that all necessary consents would be in place by the end of Stage 1.⁶

11. We received a letter on 9 July 2018 confirming that the Home Secretary and the Secretary of State for Work and Pensions had given the relevant consents.⁷

12. On 9 July 2018 the Welsh Government also shared a copy of the letter sent by the Chief Secretary to the Treasury confirming consent in relation to HMRC.⁸ While

⁴ CYPE Committee, 14 June 2018, RoP [para 10]

⁵ CYPE Committee, 14 June 2018, RoP [para 8]

⁶ CYPE Committee, 14 June 2018, RoP [para 12]

⁷ Correspondence from the Minister for Children, Older People and Social Care to Llywydd, 9 July 2018

⁸ Correspondence from the Minister for Children, Older People and Social Care to Llywydd, 9 July 2018

this letter is dated 14 March 2018, it was not shared with us until after the completion of our evidence gathering, despite its inclusion of information of direct and important relevance to our consideration of the Bill's provisions.

OUR VIEW IN RELATION TO CONSENTS

13. We agree with the Constitutional and Legislative Affairs Committee's conclusion that all necessary consents from the UK Government should have been sought and granted before the Bill was introduced into the National Assembly.⁹

14. We are deeply concerned and disappointed that information from the Chief Secretary to the Treasury, provided to the Welsh Government in a letter dated 14 March 2018, was not shared with us to aid our scrutiny of this Bill. We believe that a number of the comments made in the Chief Secretary's letter – each of which is dealt with in subsequent chapters of this report – were of direct relevance to our effective scrutiny of this Bill. We see no justifiable reason for this correspondence not to have been shared with the Llywydd and relevant Assembly committees upon the Bill's introduction.

Recommendation 1. That the Welsh Government, as a matter of course, share all information detailing the grounds on which UK Government consent is provided to a Bill with Assembly committees. This information should be shared on the Bill's introduction (or as soon as it becomes available if consents are not gained in advance of introduction) to enable full and appropriate scrutiny of a Bill's provisions.

2. 3. Regulations made under the Bill

15. Given the framework nature of this Bill much of the policy detail will appear in the regulations made under it.

16. The Minister acknowledged in his evidence to the Constitutional and Legislative Affairs Committee that consents to provisions within regulations relating to the sharing of information would be required from UK Secretaries of State. He denied that this would effectively give the UK Government a veto over the childcare funding arrangements if it refuses to provide consent.¹⁰

⁹ Constitutional and Legislative Affairs ("CLA") Committee, Report on the Childcare Funding (Wales) Bill, June 2018, para 23

¹⁰ CLA Committee, Report on the Childcare Funding (Wales) Bill, June 2018, paras 78 to 81

OUR VIEW ON COMPETENCE AS IT RELATES TO REGULATIONS

17. We agree with the Constitutional and Legislative Affairs Committee's conclusion that:

“...it will be necessary for this [the CLA] committee to give careful consideration to any regulations made under the Bill, particularly with regards to human rights and to ensure the regulations do not relate to any reservations or are in any other way outside the legislative competence of the Assembly.”¹¹

18. We also agree with the Constitutional and Legislative Affairs Committee's conclusion that, should the UK Government refuse consent in respect of the information-sharing regulations, the Welsh Government's preferred HMRC-run model would be unworkable. The receipt of the Chief Secretary to the Treasury's letter throws this into sharper focus given its statement that any changes to the proposed Welsh childcare offer would, as well as increasing costs and timescales for delivery, also “necessitate separate agreements”.

Recommendation 2. That the Welsh Government, in advance of the Stage 1 debate, outline its understanding of the “separate agreements” that would be required between itself and HMRC should the current proposed childcare offer change.

¹¹ CLA Committee, Report on the Childcare Funding (Wales) Bill, June 2018, para 54

3. General principles and need for legislation

Mixed messages about the main aim and purpose of this Bill have blurred the lines in assessing its general principles and intended effect. While claiming that its provisions are largely technical in nature, the Welsh Government has also stated that the Bill’s “primary purpose” is to “support the Welsh economy”. This chapter considers the various stated purposes and the extent to which the Bill addresses them. It also considers the need for this legislation.

3.1. The Bill’s stated purpose and intended effect

19. The Explanatory Memorandum accompanying the Bill cites a number of purposes and intended effects of its provisions.

20. The Bill’s “primary purpose” is described in the Explanatory Memorandum,¹² and in additional written information from the Welsh Government,¹³ as being “to support the Welsh economy, by helping parents, particularly mothers, to return to work or increase the hours they work”. The Welsh Government states that this will “increase the size of the workforce and improve the employability of parents, especially mothers”.¹⁴

21. The Explanatory Memorandum lists “additional purposes” for the Bill, including “increasing parents’ employment choices, particularly those of mothers” and “improving the social wellbeing of children and parents, with improvements to the quality of family life and childhood experiences that come with an increased disposable income”.¹⁵ It also states that the Bill is “intended to facilitate the delivery of a key commitment in the Welsh Labour manifesto” – namely, the provision of 30 hours of government funded early years education and childcare to the working parents of 3 and 4 years olds in Wales for up to 48 weeks per year.¹⁶

¹² Explanatory Memorandum, para 3.5, p.8

¹³ Written evidence, FI CCF 01 – Welsh Government

¹⁴ Explanatory Memorandum, para 3.5, p.8

¹⁵ Explanatory Memorandum, paras 3.5-3.6, p.8

¹⁶ Explanatory Memorandum, para 3.1, p.8

22. The Explanatory Memorandum also describes the purpose of the Bill as being:

“...to confer a power on the Welsh Ministers to provide funding for childcare for qualifying children of working parents. The Bill contains a power to make regulations about the arrangements for administering and operating the funding scheme. The primary focus of the Bill is to enable the collection and consideration of data pertinent to the determination of a person’s eligibility for the Offer.”¹⁷

23. During oral evidence sessions the Minister and his officials emphasised the Bill was “technical” in nature. They suggested that while matters relating to the childcare offer were relevant, they were not central to scrutiny of the Bill.

OUR VIEW ON THE BILL’S STATED PURPOSE

24. The Welsh Government asserted in its Explanatory Memorandum that the “primary purpose” of this Bill was “to support the Welsh economy, by helping parents, particularly mothers, to return to work or increase the hours they work”.¹⁸ In further written information, it stated that the National Assembly’s competence to legislate in this Bill was established on that basis.¹⁹ As such, it was incumbent on us to explore the evidence underpinning the assertion that this Bill, and the subordinate legislation made under it, will achieve that aim.

25. We recognise the Welsh Government has sought to be helpful by providing the policy context for the childcare offer within the Bill’s Explanatory Memorandum. Nevertheless, in oral evidence, the Minister repeatedly referred to the Bill as a “technical” one. Conflating a so-called “technical Bill” with the childcare offer has made scrutiny of one contingent on scrutiny of the other, and has blurred the lines when seeking to establish the Bill’s purpose, effect and general principles. This has made our scrutiny more challenging and detailed than the Welsh Government’s labelling of it as a “technical” Bill suggested it would be.

26. We believe that matters relating to the childcare offer itself are central to the Bill’s implementation. This is most obviously illustrated by:

¹⁷ Explanatory Memorandum, paras 3.18-3.19, p.11

¹⁸ Explanatory Memorandum, para 3.5, p.8

¹⁹ Written evidence, FI CCF 01 – Welsh Government

- section 1 of the Bill, which gives powers to the Welsh Ministers to specify eligibility criteria for accessing funding for childcare; and
- section 2(1) of the Bill, which gives regulation-making powers to the Welsh Ministers to “make provision about the administration **and operation** [our emphasis] of any arrangements made by the Welsh Ministers” for the funding of childcare for children of working parents.

27. As such, our scrutiny – and much of the evidence we received – related to the detail of the childcare offer, as well as the technical mechanisms contained within the Bill.

3. 2. The need for a Bill

28. When asked why a Bill is needed, the Minister said:

“...it’s essentially to set up, through Her Majesty’s Revenue and Customs, integrating with their childcare service, [...] one single national uniform system for delivering the offer.”²⁰

Current arrangements for the Welsh Government’s childcare offer pilot

29. The Welsh Government rolled out the pilot childcare offer in seven Early Implementer Local Authorities (EILAs) in September 2017. Under the pilot, each of the EILAs has responsibility for checking individuals’ applications and eligibility for the offer. EILAs have undertaken these checks under existing local authority functions, therefore no legislative changes have been required to date.

30. As stated in the Bill’s Regulatory Impact Assessment, these arrangements could continue and national roll-out could be achieved without the need for legislation to be passed:

“Early implementation of the Offer is administered by the seven EILAs. Should this continue to national roll out, this model would continue and each of the 22 Local Authorities would deliver the Offer within their authorities individually.”²¹

²⁰ CYPE Committee, 16 May 2018, RoP [para 6]

²¹ Explanatory Memorandum, p.28

Box 1: How early years education and childcare will fit together to make up the offer

Early years education

- The Welsh Government allocates funding to each local authority in Wales, as part of the Revenue Support Grant (RSG), to provide statutory “part-time” early years education.
- It is expected that local authorities will use their RSG to fund at least 10 hours per week during term time (i.e. 39 weeks of the year) of early years education for all children, regardless of their parents’ employment status, from the first term after their third birthday until the September after their fourth birthday. This funding is not ring-fenced.
- Some local authorities choose to fund more than 10 hours (with the highest being 30 hours of early years education offered in maintained settings in Bridgend – see Annex C for further detail on each local authority).

Childcare offer

- The Welsh Government’s stated intention is to provide all working parents with 30 hours of free childcare for 48 weeks of the year from the first term after their child’s third birthday until the September after their fourth birthday.
- Based on current guidance to EILAs on the childcare offer pilot, the existing early years education entitlement will form part of the 30 hours of the offer. It states that the exact hourly split between early years education and childcare will depend on the early years education hours provided by the relevant local authority or, where relevant, the individual school, but will include “at least 10 hours of early years education”. It also states where a maintained setting chooses to offer more early years education hours than the number offered and funded by the local authority, the local authority will need to ensure that a child’s total number of hours does not exceed 30 hours for any one child.²²
- Based on current guidance to EILAs on the childcare offer pilot, outside term time, early years education will not be available and there will be 9 weeks where working parents will be entitled to 30 hours of childcare. The guidance states that this will be delivered in non-maintained settings only, which will “inevitably put additional pressures on these services, especially during the summer holidays”.²³
- The current guidance to EILAs on the childcare offer pilot states that parents cannot “bank” hours (i.e. carry over any unused hours from one week to another). Consequently, the number of government-funded childcare hours will not exceed 30

²² Welsh Government, Childcare Offer: Guidance to Early Implementer Local Authorities, para 14, September 2017

²³ Welsh Government, Childcare Offer: Guidance to Early Implementer Local Authorities, para 15, September 2017

in any week. Parents can, however, choose to pay for additional hours, over and above the 30 hours, at their own expense.²⁴

31. However, the Explanatory Memorandum accompanying the Bill states that legislation is needed in order to create:

“...one, consistent, national online application and eligibility checking system that applicants can use to apply for childcare funding for their child [...] This should help avoid a situation in Wales where all local authorities in Wales approach the task of eligibility checking in a different way and will mean that applicants across Wales have access to the same service and that the rules of the scheme are applied consistently across the board.”²⁵

32. Oral and written evidence indicated broad support for legislation that would enable a consistent application and eligibility checking system for the childcare offer. The WLGA and ADEW emphasised the positive impact such arrangements would have on removing the “administrative burden of receiving applications and checking eligibility from local authorities”.²⁶ Social Care Wales agreed, stating that an all-Wales system would be “advantageous” and could alleviate capacity issues for local authorities.²⁷ Cwlwm, the umbrella body representing Wales’s five leading childcare providers, said:

“...a national system that provided consistency to parents, families and providers across Wales would be welcomed.”²⁸

Options for national roll-out

33. The Explanatory Memorandum lists four options for administering the national roll-out of the application and eligibility checks for the childcare offer:

- Local authorities to continue accepting applications and checking eligibility;
- HMRC to accept applications and check eligibility;

²⁴ Welsh Government, Childcare Offer: Guidance to Early Implementer Local Authorities, para 16, September 2017

²⁵ Explanatory Memorandum, para 3.22, pp.11-12

²⁶ Written evidence, CCF 21 – WLGA and ADEW

²⁷ Written evidence – CCF 14 Social Care Wales

²⁸ CYPE Committee, 24 May 2018, RoP [para 16]

- The Welsh Government to accept applications and check eligibility; and
- Contracted party to accept applications and check eligibility.²⁹

34. The Welsh Government states in its Regulatory Impact Assessment:

“Our preferred option is HMRC receiving the applications for the Offer, checking eligibility of applicants, and notifying applicants of the outcome on behalf of the Welsh Government [...] this is primarily because their experience administering the English childcare offer means they are set up to provide services more efficiently, with less risk due to their experience and their access to administrative records, and therefore provide the greatest value for money.”³⁰

HMRC’s role

35. The Explanatory Memorandum envisages HMRC’s role as follows:

“...the application and eligibility checking system will be operated by HMRC (as the ‘relevant authority’ of choice), utilising their Childcare Service, which has links to relevant corroborative data sets and represents the best value for money. Applications for the childcare funding scheme will work in a very similar way to the system currently operating in England in respect of their Childcare Offer, which has been tried and tested since 2017, and Tax Free Childcare (TFC).”³¹

36. The majority of those who provided oral and written evidence reiterated the advantages of using HMRC’s system listed in the Explanatory Memorandum. The advantages cited included:

- the enabling of eligibility checks to be made against real-time data;
- the provision of a consistent system and approach across the whole of Wales;
- the reduction in risks relating to data security and fraud; and
- the experience of HMRC, through their existing childcare service, of administering the eligibility checks for both Tax Free Credits (TFC) and

²⁹ Explanatory Memorandum, para 7.1, p.28

³⁰ Explanatory Memorandum, para 8.82, p.52

³¹ Explanatory Memorandum, para 3.25, p.12

the English childcare offer (which, by the time of the scheduled roll-out in Wales in 2020, will amount to three years' experience and learning).³²

37. The Wales Pre-School Providers Association stated that:

“...using the HMRC option should enable some economies to be made at the set-up stage as a similar system is in place already for England.”³³

38. Both Cwlwm and Chwarae Teg pointed to the HMRC option as the least burdensome for parents.³⁴

39. HMRC's written evidence explained that the Welsh Government had two options. Either it could give HMRC functions in administering the scheme in Wales or it could enable HMRC to act as an agent of the Welsh Government.³⁵

40. HMRC's evidence explained that granting it legal functions “would mean HM Treasury would need to provide consent for the eligibility regulations which underpin the scheme”.³⁶ Instead, the Welsh Government has opted to use powers under the Government of Wales Act 2006³⁷ and the Commissioners for Revenue and Customs Act 2005³⁸ to enable HMRC to act as agent of the Welsh Government.

41. HMRC explained that legislation would be needed to allow it to act in this way, to enable the necessary data sharing:

“HMRC not taking on formal functions means that the Welsh Government will need legal access to the data HMRC will use to determine eligibility in relation to the Welsh scheme. This is because the data gateways currently relied on by HMRC when supplying services to DfE [UK Department for Education] in relation to 30 hours will not work when HMRC is acting as an agent. They depend on HMRC having formal functions. This applies even where HMRC uses data which it already possesses e.g. taxation information. The Bill provides for

³² Explanatory Memorandum, para 3.26, p.12 – see also oral evidence from Cwlwm (CYPE Committee, 24 May 2018), Chwarae Teg (CYPE Committee, 24 May 2018), and WLGA and ADEW (CYPE Committee, 6 June 2018)

³³ Written evidence, CCF 08 – Wales Pre-School Providers Association

³⁴ See oral evidence from Cwlwm (CYPE Committee, 24 May 2018, RoP [para 25]) and Chwarae Teg (CYPE Committee, 24 May 2018, RoP [para 184])

³⁵ Written evidence, CCF 09 – Her Majesty's Revenue and Customs

³⁶ Written evidence, CCF 09 – Her Majesty's Revenue and Customs

³⁷ Government of Wales Act 2006, section 83

³⁸ Commissioners for Revenue and Customs Act 2005, section 15(3)

regulations creating the necessary data gateways. These regulations will be subject to consent from UK Government Ministers whose Departments provide information.”³⁹

42. Some stakeholders expressed concerns about HMRC’s ability to act as a delivery agent. These concerns are discussed in more detail in *chapter 5 – potential barriers to the Bill’s implementation*.

OUR VIEW ON THE NEED FOR A BILL

43. We agree that a Bill is necessary if the application process and eligibility checking mechanism for the national roll out of the childcare offer in Wales is to rely on data held by HMRC and other relevant UK Government departments. Without this Bill, it would not be possible for the Welsh Government, or any agent of the Welsh Government, to access this information for the purposes of administering the childcare offer in Wales.

44. We note that the Welsh Government could still roll the childcare offer out on a national basis without passing legislation, by relying on the manual checks currently undertaken by local authorities. However, we agree with stakeholders and the Welsh Government that this is likely to be burdensome for both parents and local government, and to lead to inconsistencies in practice.

45. Later in this report we seek to address some of the concerns about the challenges faced by HMRC when administering the English scheme, and its ability to provide fully bilingual services. Subject to receiving satisfactory assurances in relation to these, and based on the reasons outlined in evidence to us, we agree with the consensus in support of HMRC being the “relevant authority” of choice to administer the application and eligibility checking system in Wales.

46. We further note that, if necessary and preferable, the Bill allows the Welsh Government to select an alternative delivery agent to administer the application and eligibility checking system.

3. 3. Consultation on the Bill

47. The first six paragraphs of the consultation section of the Explanatory Memorandum provide details of the “significant engagement” undertaken with

³⁹ Written evidence, CCF 09 – Her Majesty’s Revenue and Customs

parents, providers and local authorities on the childcare offer, as opposed to the provisions of the Bill itself.⁴⁰

48. The Explanatory Memorandum goes on to explain that:

“Given the technical nature of the Bill and its limited appeal to the wider public, it was not felt appropriate to undertake an open consultation on a draft Bill. The policy objectives of the Bill were discussed in some detail with members of the Childcare Offer Stakeholder Reference Group in November 2017 and the ‘contents’ page of the Bill shared with members of the same group in March 2018.”⁴¹

49. The Welsh Government states that it has “consulted appropriately” with the stakeholders directly affected by the Bill, particularly Her Majesty’s Revenue and Customs, and lists engagement with other relevant UK departments including HM Treasury, Ministry of Justice (in relation to the Bill’s impact on the justice system) and the Department for Education.⁴²

50. When asked about the consultation undertaken on the specific provisions within the Bill, the Minister confirmed:

“We haven’t, Chair, done a formal consultation on, ‘What mechanism would you like to see to do it?’, but it has been based on clear feedback that the current complexity and bureaucratic system that we have is not the preferred one. The preference has been for a national system in Wales—one size for Wales across the piece—and one that would take the complexity away, not only from front-line providers, but from parents, with many of these families being in quite complex situations—some of them struggling to actually provide the documentation that’s needed.”⁴³

51. For the most part, stakeholders were content with the level of consultation undertaken in relation to the Bill. Childcare providers represented by Cwllwm questioned how meaningful a more formal public consultation on the mechanism within the Bill would have been, given the limited contextual information available to the public.⁴⁴ They argued that parents and providers

⁴⁰ Explanatory Memorandum, para 4.1, p.13

⁴¹ Explanatory Memorandum, para 4.8, p.14

⁴² Explanatory Memorandum, para 4.9, p.14

⁴³ CYPE Committee, 16 May 2018, RoP [para 57]

⁴⁴ CYPE Committee, 24 May 2018, RoP [para 20]

would “just be interested in can they get their eligibility checked, is this consistent with other people and is it a simple and straightforward service”.⁴⁵

52. Referring to the Explanatory Memorandum’s assertion that “significant engagement with parents” had been undertaken through the #TalkChildcare campaign, Chwarae Teg said “there is little detail on who responded and a sense that the momentum behind this campaign has waned”.⁴⁶ In relation to the consultation on the Bill’s provisions, it stated that the membership of the Childcare Stakeholder Reference Group was unclear, and emphasised the importance of including different perspectives, not only those engaged in the delivery of childcare and early years education.⁴⁷

53. When asked about the level of consultation on the Bill’s provisions, HMRC’s representative said that was a matter for the Welsh Government.⁴⁸ However, he confirmed that HMRC undertake “extensive user testing with parents and take parents’ views into account”⁴⁹ and explained that it “would always consult with parents and make sure that the product we’re offering is what they need and will get them what they want”.⁵⁰ Further information provided by HMRC reported customer satisfaction rates of 83 per cent by April 2018.⁵¹

OUR VIEW ON CONSULTATION

54. While we recognise that the technical mechanisms within this Bill do not lend themselves naturally to significant public consultation, we are disappointed that the Welsh Government relied so heavily on engagement relating to the childcare offer when preparing this Bill for introduction and in the accompanying Explanatory Memorandum.

55. We acknowledge the work undertaken to consult with the stakeholder reference group and the relevant UK Departments. However, given that the Bill sets the framework for the creation of a national, public-facing gateway to the childcare offer (which is likely to reach a significant number of parents each year if full take-up is achieved) we believe more could – and should – have been done to seek the public’s views on its provisions.

⁴⁵ CYPE Committee, 24 May 2018, RoP [para 17]

⁴⁶ Written evidence, CCF 11 – Chwarae Teg

⁴⁷ Written evidence, CCF 11 – Chwarae Teg

⁴⁸ CYPE Committee, 24 May 2018, RoP [para 280]

⁴⁹ CYPE Committee, 24 May 2018, RoP [para 282]

⁵⁰ CYPE Committee, 24 May 2018, RoP [para 284]

⁵¹ Written evidence, FI CCF 08 – HMRC

OUR VIEW ON THE BILL'S GENERAL PRINCIPLES

56. On the basis of our views as outlined above, and in anticipation of securing the Minister's consideration of – and support for – the views we have drawn and recommendations we have made elsewhere in this report, seven out of eight Committee Members agree the Bill's general principles and are in favour of it progressing beyond Stage 1.

57. Llyr Gruffydd AM does not support the general principles of this Bill. His opposition to its progression is predicated on his concern that the Bill:

- targets funding at the wrong cohort of people by restricting its provisions to the children of working parents only;
- facilitates a legislative framework that risks increasing inequalities between the children of working parents and those of non-working parents, most notably in relation to the school readiness and educational attainment of children from the poorest households; and
- requires the National Assembly to approve the general principles of a Bill that facilitates the childcare offer before the evaluation of the relevant pilots has been completed and the lessons from it learned.

58. Other Committee Members also had significant concerns. These are addressed in the views and recommendations provided throughout this report. On balance, they did not feel that these concerns prevented them from recommending that the National Assembly agree the general principles of the Bill.

Recommendation 3. That the National Assembly agree the general principles of the Childcare Funding (Wales) Bill. Llyr Gruffydd AM does not support this recommendation on the grounds outlined in paragraph 57 of this report.

4. Appropriateness of powers to make subordinate legislation

The Childcare Funding (Wales) Bill is almost entirely enabling in nature. In the main, the Bill contains regulation-making powers to give effect to the childcare offer as opposed to specifying the detail on its face. This chapter explores the appropriateness of that approach.

4. 1. Powers to make subordinate legislation

59. The Bill contains 13 sections and seven powers for the Welsh Ministers to make subordinate legislation, including powers to:

- prescribe the conditions which will have to be met for a child to be considered eligible for funding, including any declarations that will have to be made and any conditions which will have to be met by the parent of a child;
- make provision to require parents to provide information that is relevant to their application for childcare funding and make arrangements for financial penalties to be imposed where false or misleading information is provided;
- make provision that will permit HMRC and permit or require UK Government departments, Ministers of the Crown and local authorities to provide qualifying information to the Welsh Ministers or to a person providing services to the Welsh Ministers for the purposes of administering the scheme;
- prescribe the detail of arrangements for onward disclosure of qualifying information and to create criminal offences in connection with the onward disclosure of information that relates to a particular person;
- make provision for applicants to seek a review of decisions made in connection with their applications and for arrangements for appeals to be made to the First-tier Tribunal;
- confer a power or impose obligations on local authorities in respect of the funding;

- enable the increase of the maximum financial penalty that may be imposed on a person who provides false or misleading information in connection with a requirement to provide information.⁵²

60. With the exception of the order-making power in section 12 of the Bill, all other delegated powers will take the form of regulations. These regulation-making powers will be subject to the affirmative procedure.

61. The Welsh Government’s Statement of Policy Intent indicates that two sets of regulations will arise from the powers created by the Bill:

- regulations setting out the core eligibility criteria and how/when declarations of eligibility are to be made;⁵³
- regulations specifying what information needs to be provided and by whom for the purpose of eligibility checking and describe how applications for funding can be made (to including details of how challenges to decisions can be made).⁵⁴

62. The Statement of Policy Intent also refers to the development of an “administrative scheme” which will “explain what an eligible child will be able to receive and where/by whom the funded childcare will be delivered”.⁵⁵

4. 2. Balance between detail on the face of the Bill and in regulations

63. Giving evidence to us on 16 May 2018 the Minister described this legislation as “very much a framework Bill”.⁵⁶ He argued that this was appropriate because the Welsh Government was not starting from a “blank sheet”,⁵⁷ explaining that detail about the childcare offer was provided in:

- Welsh Labour’s manifesto commitment;
- the Explanatory Memorandum accompanying the Bill; and

⁵² Welsh Government, Statement of Policy Intent, April 2018, pp.2-3

⁵³ Welsh Government, Statement of Policy Intent, April 2018, p.4

⁵⁴ Welsh Government, Statement of Policy Intent, April 2018, pp.5-7

⁵⁵ Welsh Government, Statement of Policy Intent, April 2018, p.3

⁵⁶ CYPE Committee, 16 May 2018, RoP [para 20]

⁵⁷ CYPE Committee, 16 May 2018, RoP [para 36]

- the EILA pilots.⁵⁸

64. When asked why more detail was not provided on the face of the Bill, the Minister answered:

“...it gives flexibility. What this Bill does is, whilst it sets up the mechanisms with HMRC, it allows us to come back and tweak. So, for example, qualifying criteria, appeals, penalties et cetera. It allows, through lessons learned within this, not to come back to primary legislation, but actually to come back and adjust through secondary legislation, but using the affirmative procedure.”⁵⁹

65. The Minister also stated:

“...if we decide in Wales that we want to tweak and adjust this as this goes forward, I think it’s right that we give flexibility for future Ministers to be able to do that, albeit within the paradigms of the Bill as we’ve set out.”⁶⁰

66. When challenged on the fact that such flexibility could enable a future Minister to decide to reduce the childcare offer, or change its focus almost completely, the Minister told us:

“I understand what you’re saying about *de minimis*, but all I can say is, from this Government’s perspective [...] the commitment and the funding is absolutely clear to deliver this offer, but it does allow that flexibility in future, should we decide to do something different, with the support of the Assembly [...] if a future Minister of any political party came back and said, ‘We’ve had enough of this; we’re going to cut it to five hours a week.’ They’d have to put it through this Assembly first.”⁶¹

67. Much of the evidence received from stakeholders supported the current division of detail between the face of the Bill and subordinate legislation. However, this was largely on the basis that leaving details (relating to eligibility in particular) to regulations allows the necessary level of flexibility to address:

- the learning emerging from the pilots; and

⁵⁸ CYPE Committee, 16 May 2018, RoP [paras 34 and 36]

⁵⁹ CYPE Committee, 16 May 2018, RoP [para 22]

⁶⁰ CYPE Committee, 16 May 2018, RoP [para 41]

⁶¹ CYPE Committee, 16 May 2018, RoP [para 65]

- the range of concerns about the childcare offer's current eligibility criteria.

68. Members of Cwllwm, the umbrella body for Wales's five leading childcare providers, stated that they were content with the amount of detail left to subordinate legislation. They explained that this was on the basis that such an arrangement would allow the Welsh Government to reflect the learning from the pilots in the regulations and there would be a consultation on the detail of any subsequent regulations.⁶²

69. Chwarae Teg told us that the flexibility afforded by the regulations reduced its concerns about aspects of the eligibility criteria (including the age of the children and the income threshold for households), provided that sufficient scrutiny of the evaluation of the pilots followed.⁶³ The Children's Commissioner for Wales acknowledged that she considered the current division of detail between the face of the Bill and subordinate legislation to be appropriate because of her "anxiety about the offer as it stands".⁶⁴

70. HMRC's written evidence stated:

"...this Bill strikes a reasonable balance between the information set out on the face of the Bill and that which will be set out in regulations. This is particularly so because the Welsh Government can describe in reasonable detail what the scheme will look like when delivered."⁶⁵

71. Given his intention to give effect to the childcare offer through subordinate legislation, both this Committee and the Constitutional and Legislative Affairs Committee asked the Minister if a copy of the regulations would be available in draft. He confirmed that they were unlikely to be laid until the first half of 2019 and would not be available in draft.⁶⁶

Timing of the Bill's introduction

72. The Minister has committed to fully rolling out the childcare offer across Wales from September 2020.⁶⁷ The Explanatory Memorandum says "an independent evaluation and monitoring contract is in place which will provide

⁶² CYPE Committee, 24 May 2018, RoP [paras 13 and 86]

⁶³ CYPE Committee, 24 May 2018, RoP [paras 190 and 192]

⁶⁴ CYPE Committee, 16 May 2018, RoP [para 285]

⁶⁵ Written evidence – CCF 09 Her Majesty's Revenue and Customs

⁶⁶ CLA Committee, 14 May 2018, RoP [para 165]

⁶⁷ Welsh Government Written Statement, Update on the Childcare Offer for Wales, 11 April 2018

feedback and valuable learning from the early implantation of the offer”.⁶⁸ The Minister has indicated that the results of the evaluation will be published in autumn 2018.⁶⁹

73. When challenged on the timing of the Bill, particularly its introduction before the learning from the pilot EILAs and evaluation of the offer has been consolidated, the Minister explained:

“...if we don't do it now, this will not be in place in time, with the detailed discussion we need with HMRC to allow the full roll-out in 2019-20. So, this part has to be done now in advance of the pilots, the lessons learned and so on.”⁷⁰

74. Chwarae Teg described the introduction of the Bill before the completion of the evaluation as “frustrating”, stating that without the results of the evaluation it was difficult to make informed comments about the detail of the eligibility criteria to be made under this legislation.⁷¹

75. The WLGA’s representative commented that:

“...the Bill has had to be brought now, because of the timing and the target to have implemented the offer fully across Wales by 2020 [...]”

I don't think that having the Bill now is a particular issue [...] It's not an end in itself; it's just a means to an end.”⁷²

OUR VIEW ON THE TIMING OF THE BILL'S INTRODUCTION

76. We are concerned that the main reason cited by stakeholders for leaving much of the detail underpinning this Bill's provisions to regulations was the need to remain flexible while we await the results of the evaluation of the childcare offer pilots.

77. While we acknowledge that introducing this Bill any later would have posed significant challenges to the ability of HMRC to be operational as the administrator of the application and eligibility checking process in time for the

⁶⁸ Explanatory Memorandum, para 3.15, p.10

⁶⁹ CYPE Committee, 16 May 2018, RoP [para 20]

⁷⁰ CYPE Committee, 16 May 2018, RoP [para 285]

⁷¹ CYPE Committee, 24 May 2018, RoP [para 229]

⁷² CYPE Committee, 6 June 2018, RoP [paras 356 and 360]

intended national roll-out of the childcare offer in 2020, it is regrettable that this Bill has been introduced before that work has been completed.

78. The Minister and stakeholders have attached significant weight to the learning that will emerge from the evaluation of the childcare offer pilot. On this basis, and coupled with its importance in shaping the detail of the regulations that will be made under this Bill, we believe that the findings of the evaluation should be available for our consideration before the start of Stage 3. This is necessary to afford Members sufficient opportunity to propose and consider any amendments to the Bill to reflect the evaluation’s findings.

Recommendation 4. That the Welsh Government make available, before the start of Stage 3, the results of the evaluation of the childcare offer pilot to inform Members’ tabling and consideration of amendments.

Recommendation 5. That the Welsh Government does not finalise the detail of the regulations that will be made under this Bill until the findings of the evaluation of the childcare offer pilots have been fully analysed and published.

Balance between detail in the regulations and in the administrative scheme

79. Welsh Government officials confirmed in oral evidence that an administrative scheme would be developed to cover “operational matters around the delivery of the childcare offer”.⁷³ The Welsh Government’s Statement of Policy Intent lists the following as matters to be covered in the scheme:

- how the hours of childcare will be calculated;
- how parents can access the childcare (e.g. the number of hours that can be taken in one day; how many settings can be used; what happens during school holidays);
- who can deliver the childcare for the purposes of the scheme;
- the conditions which providers must meet in order to deliver the scheme;
- the arrangements for making payments to providers for childcare provided under the scheme, including the hourly rate at which funding

⁷³ CYPE Committee, 14 June 2018, RoP [para 94]

will be paid and any additional funding that may be available to support children with special or additional learning needs.⁷⁴

80. It also states that the non-statutory guidance in place for EILAs to implement the childcare offer pilot will provide “some of the basis” for the administrative scheme and that it will be informed by “ongoing engagement with stakeholders and the lessons being learned from early implementation of the Offer”.⁷⁵

81. When asked about the purpose and status of the administrative scheme, the Minister confirmed that it was non-statutory,⁷⁶ explaining:

“the administrative scheme is purely that. It is an administrative scheme. It explains what we’ve put into the primary and secondary regulations in order for the operators on the ground then to have clarity, in straightforward layperson’s terms, away from the face of the Bill, away from the complexities of secondary regulation—here’s what the scheme will do; this is how we expect you to administer it.”⁷⁷

82. When challenged on the appropriateness of leaving important matters such as the detail of who can provide the childcare, how payments will be made and at what hourly rate to a non-statutory administration scheme, the Minister and Welsh Government officials gave the following answers:

- “it is more appropriate to set them out in there [the administrative scheme] rather than in this technical Bill that allows HMRC to deliver the offer for us as an agent”;⁷⁸
- “it [the administrative scheme] would cover the operational matters around the delivery of the childcare offer rather than the more technical aspects around data sharing to establish the application system that the Bill covers”;⁷⁹

⁷⁴ Welsh Government, Statement of Policy Intent, April 2018, p.9

⁷⁵ Welsh Government, Statement of Policy Intent, April 2018, p.9

⁷⁶ CYPE Committee, 16 May 2018, RoP [para 131]

⁷⁷ CYPE Committee, 16 May 2018, RoP [para 127]

⁷⁸ CYPE Committee, 14 June 2018, RoP [para 92]

⁷⁹ CYPE Committee, 14 June 2018, RoP [para 94]

- the hourly rate is “something that we [the Welsh Government] would need to come back to and look at on a regular basis to make sure that what we were doing allowed for the sustainability of the sector”;⁸⁰
- HMRC has no role in terms of the funding rate and no role in terms of payment, therefore it would not be appropriate to include the detail in the Bill.⁸¹

83. The Minister concluded by stating:

“...the very straightforward answer, Chair, is that the hourly rate, like some other aspects, does not fall directly within the scope of this Bill. And it doesn’t fall within the primary legislative part of this on the face of the Bill, but neither, then, within the secondary, but it does fall within the scheme. It falls outwith this Bill.”⁸²

84. In response, the Committee Chair noted:

“...it is the Childcare Funding Bill, so it is difficult to understand why it wouldn’t fall within the remit of the Bill.”⁸³

85. A number of stakeholders raised concerns about matters that will be dealt with in the administrative scheme, namely who will be able to provide childcare, how payments will be made and at what hourly rate. These are discussed in more detail in *section 5.3 - arrangements after eligibility has been established*.

OUR VIEW ON PROCEDURES FOR THE ADMINISTRATIVE SCHEME

86. The administrative scheme, which will have no legal status and for which no scrutiny procedure is prescribed, will specify important matters such as what funded childcare an eligible child will be able to receive, where and by whom the funded childcare will be delivered, and at what hourly rate providers will be paid.

87. We dispute the Minister’s assertion that such arrangements fall outside the scope of this Bill. We believe that all arrangements relating to the funding of the childcare offer could fall within the scope of this Bill. This is because section 2(1) gives regulation-making powers to the Welsh Ministers in relation to the “administration **and operation of any arrangements** [our emphasis] made by the

⁸⁰ CYPE Committee, 14 June 2018, RoP [para 97]

⁸¹ CYPE Committee, 14 June 2018, RoP [para 102]

⁸² CYPE Committee, 14 June 2018, RoP [para 103]

⁸³ CYPE Committee, 14 June 2018, RoP [para 104]

Welsh Ministers for the purposes of section 1” (which, in turn, deals with the provision of “funding to any person for the purpose of securing provision of childcare for qualifying children of working parents”).

88. We believe that important issues such as these should have a statutory footing. To this end, we believe that the Bill should be amended to require the Welsh Ministers to make the administrative scheme by subordinate legislation under the Bill.

Recommendation 6. That the Bill be amended to require the Welsh Ministers to make the administrative scheme by subordinate legislation, to ensure that it is placed on a statutory footing.

4. 3. Entitlement on the face of the Bill

“Working parents”

89. The only detail relating to eligibility specified on the face of the Bill is that funding provided will be for “qualifying children of working parents”.⁸⁴ Non-working parents, or families in which one of two parents/carers is not working, will not be eligible for funding under this legislation.

90. Detail about the circumstances in which a person will be treated as carrying out paid work will be set out in regulations to be made under section 1 of the Bill.⁸⁵

Box 2: Parental eligibility

The detail below is set out in the Explanatory Memorandum but does not appear on the face of the Bill.

- 1.** Funding will be available from the term after a child’s third birthday until the September after their fourth birthday:
 - where both parents are working or where the sole parent is working in lone parent families;
 - where each parent is earning, on average, a weekly minimum equivalent to 16 hours at national minimum wage or national living wage;
 - for self-employed parents and parents on zero hours contracts, providing their average earnings meet the minimum earnings criteria over a 3 month period.

⁸⁴ Childcare Funding (Wales) Bill [as introduced], section 1(1)

⁸⁵ Explanatory Memorandum, Table 5.1, pp.16-17

2. If at least one parent in a household earns £100,000 or more a year (gross), that family will not be eligible to receive the additional hours of funded childcare provided through the childcare offer.
3. Arrangements will be made to provide funding in other exceptional circumstances, e.g. in the case of: a parent who is temporarily away due to maternity / paternity / adoption / statutory sick leave, or in receipt of specific benefits because he / she is disabled or has substantial caring responsibilities.⁸⁶

91. Whether or not the Bill should be restricted to working parents only was a matter of significant scrutiny and discussion during our consideration of the Bill.

The Children's Commissioner's view

92. The Children's Commissioner for Wales outlined her strong opposition to excluding the children of non-working parents from this Bill's provisions:

“As currently drafted, this provision will provide a large subsidy for some of Wales' highest-earning families, while not being targeted to assist the country's least well-off families and their children.”⁸⁷

93. She attributed her opposition to the exclusion of the children of non-working parents to the fact that this approach was “likely to reinforce inequalities in outcomes for different social groups”.⁸⁸ She explained:

“I cannot support a policy that excludes the children of non-working parents from state investment in early years provision, when those children, on average, start school behind their peers on key developmental indicators. We know from the Millennium Cohort Study that children from the poorest families are already around 10 months behind those from better-off background in terms of development by the age of 3.”⁸⁹

94. Her written evidence stated that she was “unconvinced” that targeting working parents was evidence-based, and that “the proposals are simply designed to fulfil a manifesto commitment rather than meeting the needs of children and their families both now and in the future”.⁹⁰ We consider the evidence in relation

⁸⁶ Explanatory Memorandum, paras 3.10-3.13, pp.9-10

⁸⁷ Written evidence, CCF 02 – Children's Commissioner for Wales

⁸⁸ Written evidence, CCF 02 – Children's Commissioner for Wales

⁸⁹ Written evidence, CCF 02 – Children's Commissioner for Wales

⁹⁰ Written evidence, CCF 02 – Children's Commissioner for Wales

to the impact of the proposed childcare offer on employment rates in *chapter 8 – additional issues relating to the broader childcare offer*.

95. In light of her concerns, the Children’s Commissioner called for the removal of the term “working parents” from the face of the Bill:

“Removing the words ‘working parents’ from section 1 of the Bill and placing all qualifying aspects for the funding in secondary legislation would create the flexibility to adapt eligibility based on the evaluation of evidence.”⁹¹

Other stakeholders’ views

96. The teachers’ union NASUWT raised similar concerns to the Children’s Commissioner’s, stating its fear that the effect of restricting the Bill’s provisions to qualifying children of working parents “could be to exacerbate achievement gaps between some of the most deprived and socially excluded young children and other children in less disadvantaged circumstances”.⁹²

97. Save the Children concluded:

“...the Bill may mean we have a childcare system that is not able to fulfil its potential to help prevent children in poverty falling behind early and remaining behind throughout their education and further into their lives. The consequences of not enabling all children to benefit from quality early education and care for children’s development and learning could be detrimental to the Government’s clear commitment to give all children the best possible start in life.”⁹³

98. The majority of stakeholders either did not comment on the Bill’s focus on working parents, or accepted that it was at the core of the manifesto commitment underpinning the Bill’s introduction and would contribute towards eliminating one of the barriers to employment.

99. When asked whether the Bill’s focus on working parents was the correct one, Chwarae Teg responded:

“When you take the broad offer that Welsh Government’s got in place, including, for example, Flying Start, this targeted intervention for

⁹¹ Written evidence, CCF 02 – Children’s Commissioner for Wales

⁹² Written evidence, CCF 18 – NASUWT

⁹³ Written evidence, CCF 17 – Save the Children

working parents is the right one, because we are consistently told that it is childcare that is the barrier to continuing to work for parents [...] it's right to make decisions when you have limited resources, and this seems to us to be an eminently sensible one to make."⁹⁴

100. Chwarae Teg went on to state that those who are in education or training, where that is directly intended to enable them to get back into work, "should be able to access the childcare offer" but that extending it to a universal offer "runs the risk of spreading the offer too thin".⁹⁵

The Minister's response

101. When asked why the Bill was focused on working parents only, the Minister emphasised:

- childcare is cited as one of the biggest barriers preventing parents, particularly mothers, from re-entering work and employment;⁹⁶
- the Bill does not stand on its own – a wider range of activity, such as the Parents, Childcare and Employment Scheme (PaCE), Families First, Flying Start, Healthy Child Wales, children's zones, the Financial Contingency Fund and the Integrated Family Support Scheme, is in place to support non-working parents or those training to return to work;⁹⁷
- if money were no object, the situation would be different,⁹⁸ but the commitment made in the Welsh Labour manifesto, which the Bill seeks to deliver, was to working parents.⁹⁹

102. When asked to respond to the Children's Commissioner's concerns that the Bill's provisions could increase inequality between the children of working and non-working parents, particularly in relation to the school readiness gap and educational attainment, the Minister responded:

⁹⁴ CYPE Committee, 24 May 2018, RoP [para 201]

⁹⁵ CYPE Committee, 24 May 2018, RoP [para 203]

⁹⁶ CYPE Committee, 16 May 2018, RoP [para 20]

⁹⁷ CYPE Committee, 16 May 2018, RoP [para 107]

⁹⁸ CYPE Committee, 14 June 2018, RoP [para 25]

⁹⁹ CYPE Committee, 16 May 2018, RoP [para 89]

“If we look at it [the childcare offer as enabled by the Bill] on its own, yes, I’d agree entirely with the children’s commissioner, but it isn’t on its own.”¹⁰⁰

103. In response to the call for the removal of the words “working parents” from the face of the Bill, the Minister indicated that this could render the Bill redundant:

“the practical and legislative challenges that could emerge [from removing the words ‘working parents’ from the face of the Bill] would depend on what the new policy would look like and whether would be any requirement for eligibility checks in respect of the parent of child accessing the Offer. It may be that extensive revisions would be required to the Bill as currently drafted, given that it provides the legislative basis necessary to integrate with HMRC’s Childcare Service. It could be that there would be no need for a Bill at all.”¹⁰¹

104. The Minister also highlighted his view that there could be potential issues of competence in the event that a Bill would continue to be necessary to provide a more universal offer:

“If the intention were to provide for universal access to the funding, then the main purpose of the legislation would need to be considered afresh as would the legislative competence of the Assembly (in the event that a Bill would continue to be necessary), particularly in light of the reservation for social security schemes in section FI of Part 1 of Schedule 7A to GOWA.”¹⁰²

105. When asked if he would be open to the extension of the Bill’s provisions to parents in education or training linked to securing employment, the Minister said that was not a matter for this Bill, but that he would be interested in suggestions of other ways to support that population of parents.¹⁰³

106. When questioned about whether any assessment had been undertaken of the numbers of parents who might benefit from an extension of the Bill’s provisions to those in education or training linked to securing employment, he responded:

¹⁰⁰ CYPE Committee, 16 May 2018, RoP [para 109]

¹⁰¹ Written evidence FI CCF 01 – Welsh Government

¹⁰² Written evidence FI CCF 01 – Welsh Government

¹⁰³ CYPE Committee, 14 June 2018, RoP [para 17]

“...we are very sympathetic to those who are aspiring to get back into work. But, of course, this offer is very much targeted at those parents who are working parents [...] it isn’t focused on those who are in education or training—it simply isn’t—so we haven’t done an assessment on that.”¹⁰⁴

107. During the course of our Stage 1 scrutiny, Huw Irranca-Davies AM (the Member in charge of this Bill) announced his bid for the Welsh Labour leadership.¹⁰⁵ As part of his announcement, he stated that the current pilots “were only part of a longer-term vision” and that:

“We know, from international evidence, that universal, high-quality, pre-school provision, which brings together early education and childcare—it works. It really works. It helps address the impacts of poverty. It narrows the attainment gap when children start school. And combined with quality education through all levels, it transforms the life chances of these children as they grow into adulthood and throughout their lives.”¹⁰⁶

OUR VIEW ON RESTRICTING THE BILL TO WORKING PARENTS

108. We have significant concerns about the evidence presented to us in relation to the possible impact of restricting the provisions of this Bill to the qualifying children of working parents. Serious thought needs to be given to the views expressed to us that restricting this Bill to the children of working parents only could exacerbate existing differences in the school readiness and educational attainment of children from the poorest and the most well-off backgrounds.

109. We acknowledge the Minister’s assertions that alternative support exists for children of non-working parents to access funded childcare, including the universal access to part-time early years education for all 3 and 4 year olds, as well as Flying Start for those who live in Wales’s poorest post-code areas. We also acknowledge the role of programmes such as PaCE, funded jointly by the Welsh Government and the European Social Fund, to cover the cost of childcare while parents undertake training, work experience or volunteering to gain the skills they need to get a job.

¹⁰⁴ CYPE Committee, 14 June 2018, RoP [para 15]

¹⁰⁵ BBC News online, [Ex-MP Irranca-Davies joins Welsh Labour leader race](#), 29 June 2018

¹⁰⁶ BBC News online, [Ex-MP Irranca-Davies joins Welsh Labour leader race](#), 29 June 2018 – see embedded video in article

110. However, our February 2018 report on the outreach elements of Flying Start demonstrated clearly that the majority of children living in poverty fall outside defined Flying Start areas, and so are less likely to be able to benefit from Flying Start services.¹⁰⁷ As such, we have significant concerns that some of our most deprived children will fall through the gaps in current provision. Furthermore, we are concerned that the PaCE programme, which targets inactive parents aged 25 and over, and parents aged 16-24 who are not in education or employment (NEET), is set to end in 2020.

111. While some Committee Members would prefer a more universal childcare offer to be available, we recognise that the current financial climate does not make this a viable prospect in the near future. Nevertheless, we think this Bill's provisions should extend to a wider pool of children than is currently the case, as a signal of the Welsh Government's aspiration to broaden its reach.

112. In line with the Welsh Government's stated purpose for this Bill of supporting the Welsh economy by helping parents return to work, we believe that the Bill should be amended so that parents who are seeking work, through undertaking education and training linked to securing employment, qualify for the Government-funded childcare offer facilitated by this legislation.

Recommendation 7. That the Bill be amended to extend its provisions beyond working parents, to include parents who are seeking work by undertaking education and training linked to securing employment, to be defined in regulations.

113. As part of his Labour leadership bid, the Member in charge of this Bill outlined publicly his view that universal, high-quality early years education and childcare helps address the impacts of poverty and narrows the attainment gap when children start school. In light of this, we believe the Bill should be amended to provide the Welsh Ministers with a regulation-making power to extend the Bill's provisions to other categories of parent in the future. In line with our other recommendations in relation to the eligibility criteria, we believe any such regulations should be subject to the super-affirmative procedure.

¹⁰⁷ CYPE Committee, [Flying Start: Outreach](#), February 2018. Flying Start is delivered by local authorities and within defined geographical areas. Flying Start funding is allocated according to the estimated number of 0-3 year olds living in households receiving income support in lower super output areas. The programme consists of four core elements universally available to all children aged under 4 years and their families in areas in which the programme is running. This includes "free quality part time childcare" for all eligible 2 to 3 year olds for 2.5 hours a day, 5 days a week for 39 weeks of the year. This should also include at least 15 sessions of childcare provision for families during school holidays.

Recommendation 8. That the Bill be amended to provide the Welsh Ministers with a regulation-making power to extend its provisions to other categories of parent in the future. Any such regulations should be subject to the super-affirmative procedure.

Amount of childcare

114. The amount of childcare that must be provided to children in England under similar legislation is stated on the face of the Childcare Act 2016 as “a period equivalent to 30 hours in each of 38 weeks in any year”.¹⁰⁸

115. We asked the Minister why similar detail relating to entitlement was not on the face of the Bill. He told us that “the offer is the offer” and that 30 hours of childcare a week, 48 weeks of the year, would be available for working parents in line with the criteria that would follow in regulations.¹⁰⁹ He stated that he favoured an approach that would enable a future Minister to say “Well, actually, we’ve learnt that there could be a different offer, an improved offer, something different, something that will reach further” but emphasised that he was not giving that commitment at this stage.¹¹⁰

OUR VIEW ON SPECIFYING THE AMOUNT OF CHILDCARE

116. We note the Minister’s desire to retain sufficient flexibility to be able to effect change in light of emerging evidence or lessons learned. However, we agree with the Constitutional and Legislative Affairs Committee’s conclusion that:

“...flexibility and future proofing are admirable concepts but not at the expense of having a clear understanding of what the Bill will deliver at the time of its introduction.”¹¹¹

117. The Minister has repeatedly said that the childcare offer facilitated by the Bill (and the regulations to be made under it) will be the same as the offer outlined in Welsh Labour’s 2016 Assembly election manifesto. In light of this, we see no valid reason not to amend the Bill to include the amount of childcare that will be available on its face, as is the case for the Childcare Act 2016 which applies to England.

¹⁰⁸ Childcare Act 2016

¹⁰⁹ CYPE Committee, 16 May 2018, RoP [para 62]

¹¹⁰ CYPE Committee, 16 May 2018, RoP [para 62]

¹¹¹ CLA Committee, Report on the Childcare Funding (Wales) Bill, June 2018, para 48

118. Nevertheless, we acknowledge that changes may be necessary to the amount of childcare currently proposed due to emerging evidence and lessons learned, or to a change in the size of the public purse. As such, we propose that the Bill should include a provision enabling the amount of childcare to be amended by regulations. We believe such regulations should be subject to a super-affirmative procedure to enable the Assembly to be consulted on, and have an opportunity to influence, the amount of childcare offered.

Recommendation 9. That the Bill be amended to require the Welsh Ministers to fund childcare for qualifying children of working parents for, or for a period equivalent to, 30 hours in each of 48 weeks in any year (to include the early years education already funded through local authorities). The Bill should also include provision enabling the amount of childcare to be amended in the future by regulations subject to the super-affirmative procedure.

Age of “qualifying child”

119. The age of a “qualifying child” is not set out on the face of the Bill. Section 1(2)(a) of the Bill states that detail relating to who is a “qualifying child” will be specified in regulations. Section 11(2) provides that these regulations will be subject to the affirmative procedure.

120. The Explanatory Memorandum states that:

“...funding will be available from the term after the child’s third birthday until the September after their fourth birthday.”¹¹²

121. The Welsh Government’s National Childcare Survey for Wales, published in 2018, stated that the “requirement for childcare is highest between the ages of 1-3” and:

“...for children aged 0-2, parents found it more difficult to afford childcare (55%) than those with children aged 3-4 (34%).”¹¹³

122. As stated earlier in this report, the majority of witnesses were content to leave specification of the age of a “qualifying child” to regulations. However, a high number attributed this willingness to the fact that they were keen to learn more from the evidence emerging from the evaluation of the childcare offer pilot

¹¹² Explanatory Memorandum, para 3.11, p.9

¹¹³ Welsh Government, Statistics for Wales Statistical Bulletin: National Survey for Wales, 2016-17 Childcare, 30 January 2018

before specifying the age range to which the national, rolled-out offer should apply. This was summarised by the Children’s Commissioner who said:

“...in terms of the evidence, we know that, actually, from age two children from the most disadvantaged backgrounds benefit from that [childcare] input. [...] I would be anxious about tying down too much any future shaping of the offer in terms of age group.”¹¹⁴

123. Stakeholders including UNISON and Chwarae Teg stated that if regulations under the Bill were to specify that children aged 3 and 4 of working parents (rather than younger children) would qualify for the offer, childcare would be “too late” for the purposes of returning to work, especially for mothers who have taken maternity leave. Chwarae Teg’s written evidence elaborated:

“While an increase in the amount of childcare available for 3 and 4 year olds may support those working part time to increase their hours, we remain of the view that the support will come too late to support many mothers back into work following parental leave, potentially limiting the impact of the new Offer.”¹¹⁵

124. When the Minister was asked about the age of the qualifying children, and the evidence provided in the National Childcare Service for Wales, he said:

“We’re aware of the national survey for Wales [...] But one of the things that they did flag up was, of course, that this barrier to working through absence of state-supported, funded childcare was a significant barrier. Well, that is a barrier for three-year-olds as well. [...] So, it is a step forward, but, as I say, in that wider debate going forward it’s not something that we close our ears to. [...] And it is interesting in having a Bill designed around working parents that gives us the flexibility to go further should we want to and should funding allow in future.”¹¹⁶

OUR VIEW ON THE AGE OF THE “QUALIFYING CHILD”

125. Our preference, in the pursuit of clear and transparent law making, would be to specify the age of the “qualifying child” on the face of this Bill. However, based on the evidence we have received, we are not convinced that targeting funding at 3 and 4 year olds will be more effective than, for example, targeting 0 to 2 year

¹¹⁴ CYPE Committee, 16 May 2018, RoP [para 211]

¹¹⁵ Written evidence, CCF 11 – Chwarae Teg

¹¹⁶ CYPE Committee, 16 May 2018, RoP [para 89]

olds, in order to achieve the Bill's stated aim of enabling parents, particularly mothers, to return to work or increase the hours they work.

126. As a consequence, we do not propose amending this Bill at this stage to include the age of the “qualifying child” on its face. However, we believe the Welsh Government should keep this under review so that either:

- the Bill can be amended at a later stage to reflect the evidence received from the evaluation of the pilot; or
- the eligibility regulations reflect the lessons learned in relation to the best age group to target to meet the Bill's stated aims.

Recommendation 10. That the Welsh Government keep under review the age of the “qualifying children” to whom the Bill's provisions should apply. This is with a view to ensuring that either:

- the Bill can be amended at a later stage to include the details of the age of a “qualifying child”, if the evidence received from the evaluation of the pilot is unequivocal; or
- the eligibility regulations reflect the lessons learned in the specified age of the “qualifying child”, if the results of the evaluation are ambiguous in this regard.

Temporary Exclusion Period (“grace” period)

127. NASUWT called in its written evidence for consideration to be given to including provisions in the Bill or in regulations:

“...to enable parents to retain their childcare place temporarily if they are no longer eligible for the extended entitlement, as the consequences for children may be significant.”¹¹⁷

128. This call was echoed by Chwarae Teg, who recommended that a “grace period” be included in regulations,¹¹⁸ “especially in the context of quite a volatile job market”.¹¹⁹

¹¹⁷ Written evidence, CCF 18 – NASUWT

¹¹⁸ Written evidence, CCF 11 – Chwarae Teg

¹¹⁹ CYPE Committee, 24 May 2018, RoP [para 244]

Box 3: Temporary Exemption (or “grace”) Period (TEP)

- Under the current childcare offer pilot, when a person becomes ineligible for the childcare offer they enter an 8 week TEP, during which time their child can continue to receive Government-funded childcare.
- It is the parent’s responsibility to inform their local authority and their provider that their circumstances have changed. The TEP will run from the point at which they stopped being eligible for the offer, regardless of when a parent provides this notification.
- At the point a parent’s TEP ends they will no longer be able to access the offer and they become responsible for paying the provider.¹²⁰

129. In response to the calls for the inclusion of a “grace period”, the Welsh Government stated that it:

“...recognises that it is important that families who fall out of eligibility are still able to access the offer for a limited period of time. Not only does this provide stability for both children and childcare providers but it also gives parents the opportunity to regain eligibility [...] The Welsh Government is fully committed to there being a fair and consistent temporary exemption period when the offer is rolled out in Wales.”

OUR VIEW ON THE TEMPORARY EXEMPTION PERIOD (TEP)

130. We agree with Chwarae Teg and NASUWT that provision should be made to enable parents to retain their childcare funding and place temporarily if they are no longer eligible under the Bill’s provisions.

131. We welcome the arrangements the Welsh Government has in place for a TEP. We believe they are necessary, both for the sake of the children and parents affected by any change in employment, and for the sustainability of providers delivering the Welsh childcare offer.

132. It is not clear from the information received from the Welsh Government where the requirement to have a TEP will be stated. We think this needs to be addressed.

Recommendation 11. That the Bill be amended to require regulations made under it to make provision for a temporary exemption period (also referred to as a “TEP” or “grace period”).

¹²⁰ Written evidence, FI CCF 02 – Welsh Government

4. 4. Consultation on and scrutiny of the regulations

133. As illustrated above, the Welsh Government intends to specify much of the detail underpinning eligibility for the childcare offer in regulations made under this Bill. The Welsh Government will also make arrangements for the provision of information relating to eligibility in regulations. The regulations made under the Bill will all be subject to the affirmative procedure.

Box 4: Subordinate legislation

- Subordinate legislation (such as regulations) can only be made if primary legislation (an Act) confers a power to do so.
- Subordinate legislation subject to the affirmative procedure requires the express approval of the National Assembly.
- Subordinate legislation subject to the negative procedure becomes law without a debate or a vote, but can be annulled by the National Assembly if a motion to that effect is tabled and subsequently agreed by the National Assembly.
- A very small proportion of subordinate legislation is subject to specific procedures set out in the enabling act. These procedures include enhanced affirmative procedures (sometimes known as super-affirmative procedures) and may specify, for example, a certain approach to consultation in advance of the subordinate legislation being made.

134. With regard to the regulations on eligibility criteria, the Explanatory Memorandum states:

“The affirmative procedure is appropriate given that these regulations will set out the detailed eligibility criteria for the Offer and as such will have significant policy implications.”¹²¹

135. When asked about the sufficiency of the affirmative procedure for the eligibility regulations, Chwarae Teg stated “that should be sufficient, as long as people know what it is that they’re voting through”.¹²²

136. Childcare providers and their umbrella organisation, Cwllwm, indicated that they were happy with the flexibility leaving the detail to regulations provided that sufficient consultation be undertaken, particularly in relation to “the administrative and payment elements of the childcare funding”.¹²³ When asked

¹²¹ Explanatory Memorandum, Table 5.1, p.16

¹²² CYPE Committee, 24 May 2018, RoP [para 236]

¹²³ Written evidence, CCF

whether the lack of detail on the face of the Bill exacerbated their concerns about difficulties with the payment model in England, they said that they were confident that consultation was more comprehensive and inclusive in Wales so were not overly worried.¹²⁴

137. The Children’s Commissioner argued that use of a super-affirmative procedure would give more opportunity for consultation on – and scrutiny of – the eligibility regulations. Her official stated:

“...given the timing of the introduction of the Bill and the fact that there’s so much yet to see from the pilot phase, and the reporting not coming until the autumn, then I think that might be a justification for using the superaffirmative procedure. There’s a lot more that needs to be taken account of.”¹²⁵

138. When asked about the appropriateness of the affirmative procedure for these regulations, the Minister said he believed the Welsh Government had struck the correct balance because:

“...the affirmative allows, on some technical matters as well as more substantive matters, the ability to come back here and for the Assembly to say, ‘No, we don’t agree with you.’”

139. However, the Minister went on to say he was not of a “closed mind” in relation to the application of a super-affirmative procedure, but that clarity would be needed on which regulations were sufficiently substantive to justify such an approach.¹²⁶ He emphasised that technical regulations should be subject to the affirmative procedure,¹²⁷ explaining that an argument could have been made for those to be subject to the negative procedure given their nature.¹²⁸

OUR VIEW ON THE USE OF THE AFFIRMATIVE PROCEDURE

140. The recommendations earlier in this chapter relating to eligibility criteria demonstrate our natural inclination to put as much detail about the core offer on the face of the Bill as possible.

¹²⁴ CYPE Committee, 24 May 2018, RoP [para 86]

¹²⁵ CYPE Committee, 16 May 2018, RoP [para 288]

¹²⁶ CYPE Committee, 16 May 2018, RoP [para 162]

¹²⁷ CYPE Committee, 16 May 2018, RoP [para 162]

¹²⁸ CYPE Committee, 16 May 2018, RoP [para 126]

141. However, we recognise that, given the timing of the Bill’s introduction and the conclusion of the evaluation of the childcare offer pilot, more detail relating to eligibility will need to be left to regulations than we may otherwise have liked. However, as recommended by the Constitutional and Legislative Affairs Committee in its report on the Bill, the breadth of power being sought in the regulations needs to be “counterbalanced”.¹²⁹

142. In light of this, and the significance of the eligibility criteria to the ultimate effectiveness and impact of the childcare offer this Bill seeks to facilitate, we believe the regulations to be made under section 1 of the Bill merit a super-affirmative, rather than affirmative, procedure. This super-affirmative procedure should enable consultation with key stakeholders and the National Assembly on the eligibility criteria, and any subsequent changes to them.

Recommendation 12. That the Bill be amended to provide that:

- regulations made under section 1 should be subject to a super-affirmative procedure rather than the affirmative procedure; and
- any revisions to regulations made under section 1 should be made using the super-affirmative procedure.

143. We noted that regulations made under section 2 of the Bill are subject to the affirmative procedure. We are satisfied with this approach.

¹²⁹ CLA Committee, Report on the Childcare Funding (Wales) Bill, June 2018, recommendation 6

5. Potential barriers to the Bill's implementation

Overall, few potential barriers to the implementation of the Bill's specific provisions were identified in evidence. However, this is largely attributable to most of the detail being left to regulations. Some potential challenges to the mechanism created by the Bill for providing funding by the Welsh Ministers of childcare for children of working parents, and connected matters, were highlighted and are explored in this chapter. Barriers to implementation of the wider childcare offer are discussed in chapter 8.

5.1. HMRC as delivery agent

144. While there was broad consensus in favour of legislating to create a national online application system administered by HMRC on the Welsh Government's behalf, some concerns were expressed in evidence.

Technical problems in England

145. First, some respondents referred to problems experienced in England when the childcare offer, administered by the HMRC, was rolled out there. Chwarae Teg's written evidence summarised views shared by a number of consultees, including the National Day Nurseries Association and the Association of Directors of Education in Wales (ADEW):

“...we would urge the Welsh Government to learn from the previous challenges the HMRC has encountered in administering checks for the English childcare offer and ensure robust measures are in place to monitor the service and ensure no parents miss out on their entitlement.”¹³⁰

¹³⁰ Written evidence, CCF 11 – Chwarae Teg

146. The Wales Pre-School Providers Association and National Day Nurseries Association Cymru called for the Welsh Government to ensure that these issues are resolved before commissioning HMRC.¹³¹

147. Both the Welsh Government and HMRC noted that lessons had been – and were continuing to be – learned as part of the English scheme’s roll-out. They noted that these would “hopefully” be “ironed out” by the time the Welsh scheme was fully rolled out in 2020.

148. On 9 July 2018 we received a copy of the Chief Secretary to the Treasury’s letter to the Welsh Government, giving her consent to the Bill’s provisions as they relate to HMRC. This letter stated:

“Whilst HMRC are keen to begin work as soon as possible [on developing the application and eligibility checking system for the Welsh offer], I must stress that the department’s immediate focus will continue to be stabilising and improving the childcare service for existing customers.”¹³²

Welsh-language service

149. Secondly, concerns were expressed about HMRC’s capacity and ability to deliver a bilingual service. Cymdeithas yr Iaith Gymraeg (the Welsh Language Society) stated that HMRC “is not the best option for ensuring robust Welsh language provision”.¹³³

150. The importance of providing a bilingual application and eligibility checking system was emphasised by childcare providers:

“...what’s important is ensuring that whatever agreement is developed with HMRC shows clearly that all the documentation, the correspondence, the links, and the websites that are shared with parents and providers are available bilingually to all people at all times, and that they can switch between them according to their need. [...] And also, that any guidance is bilingual and that the support system

¹³¹ Written evidence CCF 08 – Wales Pre-School Providers Association and CCF 12 – National Day Nurseries Association Cymru

¹³² Correspondence from the Minister for Children, Older People and Social Care to Llywydd, 9 July 2018

¹³³ Written evidence, CCF 19 – Cymdeithas yr Iaith Gymraeg. The quote used in this report is a translation into English – the written evidence was provided in Welsh only and stated “‘Nid felly dyna'r opsiwn gorau o ran sicrhau darpariaeth Gymraeg gadarn”

over the phone, or whatever is developed, has a bilingual element developed for that so that parents and providers can access it in Welsh or in English.”¹³⁴

151. When questioned on HMRC’s capacity to deliver a fully bilingual service, its representative told us:

“I’ve been making my colleagues clear for some time that we do need to be more bilingual when we’re representing the Welsh Government than maybe we might have to when we were just being HMRC.”¹³⁵

152. He went on to confirm that as agents of the Welsh Government, HMRC would be subject to the Welsh Government’s language scheme¹³⁶ and that all public-facing services would be available through the medium of Welsh and English.¹³⁷

Adapting to any changes to eligibility criteria

153. During the course of Stage 1 scrutiny, the Minister emphasised the flexibility provided by leaving eligibility criteria for the childcare offer to regulations, and the scope it gave for lessons to be learned and approaches adjusted in light of the evidence arising from the childcare offer pilot.

154. The Wales Pre-School Providers Association highlighted in its evidence that:

“...a risk could arise if policy in England and Wales should differ in the future and this should be planned so that services are not disrupted.”¹³⁸

155. In response to questioning about how HMRC would respond to any changes to the current approach to eligibility criteria or future regulations, the HMRC’s representative stated that, in principle, it would not be a problem as the HMRC would simply be acting as a supplier to the Welsh Government on a scheme that is devolved.¹³⁹ Nevertheless, he acknowledged that HMRC:

¹³⁴ CYPE Committee, 24 May 2018, RoP [para 83]

¹³⁵ CYPE Committee, 24 May 2018, RoP [para 341]

¹³⁶ CYPE Committee, 24 May 2018, RoP [para 339]

¹³⁷ CYPE Committee, 24 May 2018, RoP [para 345]

¹³⁸ Written evidence CCF 08 – Wales Pre-School Providers Association

¹³⁹ CYPE Committee, 24 May 2018, RoP [para 360]

“...can’t underwrite making any change that is wanted to any timescale, and we can’t be sure what the price would be until we do the discovery work to work it out on a case-by-case basis.”¹⁴⁰

156. In oral evidence the Minister acknowledged:

“The more complexity we add into it [the specification for HMRC], the more it increases the risk on delivery on time [...] there would be a cost in adjusting a system [...] We have run some of the figures past this, and at the moment, both in terms of delivering the offer as it currently is, of getting in to the HMRC in a very fast, slipstream way to deliver this commitment—we can do that now, but some of that flexibility I was talking about is enabled within the Bill that if we thought, based on the evidence, ‘Well, it’s going disproportionately, unfairly, to higher earning families’ we could look at that in future.”¹⁴¹

157. The Minister also confirmed that the Bill as drafted would allow the Welsh Government to select another delivery agent if necessary.¹⁴²

158. The Chief Secretary to the Treasury’s letter to the Welsh Government relating to consents stated:

“The present agreement to integrate the Welsh offer into the service in based on the current plans from WG. I must make it clear that any changes to the operation of the 30 hours childcare scheme or eligibility criteria would generate further costs and will affect the timelines for delivery.”¹⁴³

OUR VIEW ON HMRC AS THE DELIVERY AGENT

159. Based on the evidence we have received, we believe that the preferred option of using the HMRC as the Welsh Government’s delivery agent for the application and eligibility checking system is sensible. We acknowledge the reports of the early challenges faced by HMRC in implementing the childcare offer in England, but note both the Minister’s and HMRC’s confidence that such

¹⁴⁰ CYPE Committee, 24 May 2018, RoP [para 360]

¹⁴¹ CYPE Committee, 16 May 2018, RoP [para 94]

¹⁴² CYPE Committee, 16 May 2018, RoP [para 48]

¹⁴³ Correspondence from the Minister for Children, Older People and Social Care to Llywydd, 9 July 2018

issues have been mostly “ironed out” by now, and will be addressed fully in time for the roll-out of the Welsh offer in 2020.

160. It is essential that the service provided by HMRC is fully bilingual. We note HMRC’s assurances that it realises it must act in accordance with the Welsh language standards of the Welsh Government (as opposed to its own standards as HMRC) when acting as the delivery agent. However, we would welcome more reassurance from the Minister and HMRC of the steps they are taking – beyond reminding colleagues of the need to be “more bilingual” when representing the Welsh Government – to deliver all their services relating to the childcare offer in Wales in both Welsh and English.

Recommendation 13. That the Welsh Government work with HMRC to outline, before the Stage 1 debate, what arrangements will be in place to ensure that HMRC is able to deliver a fully bilingual application and eligibility checking system (both online and on the telephone) under the provisions of this Bill.

161. We welcome HMRC’s confirmation in oral evidence of its flexibility to adapt its services should changes to the eligibility criteria underpinning the application system be required. This is particularly important given the introduction of the Bill in advance of the completion of the childcare offer pilot’s evaluation, and the Minister’s repeated commitment to consider the evidence and learn from it.

162. We recognise that the “flexibility” afforded by the decision to leave most of the eligibility criteria to regulations could lead to additional costs and delays to the timescales for the introduction of the system.

163. We are concerned, however, that important information relating to the grounds on which HMRC has engaged with the Welsh Government to act as delivery agent – detailed in a letter dated 14 March 2018 – was not shared with this Committee until 9 July 2018. We are especially concerned by the fact that neither HMRC’s nor the Minister’s evidence was as categorical in stating that any divergence from the proposed eligibility criteria would generate further costs and affect the timelines for delivery. Had we been aware of the content of this letter, we would have been much better placed to challenge both the Welsh Government and HMRC on the level of flexibility that will realistically apply to the eligibility criteria for the childcare offer.

164. Should the eligibility criteria change from those outlined on the face of the Bill and in its accompanying Explanatory Memorandum, a revised Regulatory Impact Assessment should be undertaken to establish the new administrative costs. This should be published to inform Members’ consideration of the Bill at

later stages. Should decisions on eligibility criteria not be made before the Bill completes its passage through the National Assembly, this information should be published to inform future scrutiny of the relevant regulations.

Recommendation 14. That the Welsh Government produce a revised Regulatory Impact Assessment should the eligibility criteria for access to funding of childcare change from those outlined on the face of the Bill and in the Explanatory Memorandum. This work should be undertaken and published in time to inform Members' consideration of the Bill at later stages or, if decisions are not made on eligibility until the Bill has completed its passage through the Assembly, in time to inform the scrutiny of the relevant regulations.

5. 2. Digital exclusion

165. The Explanatory Memorandum states that the application and eligibility checking system established under the Bill “will be accessible to all – either online or by telephone and it is anticipated that service levels and standards for both routes will be the same”.¹⁴⁴

166. It goes on to state:

“We know from the National Survey for Wales that digital exclusion is relatively low (15%) amongst the adult population as a whole (16+) but higher amongst disabled people (25%) and people aged 50 and over (27%). The proposed application and eligibility checking system will be supported by a telephone helpline to meet the needs of applicants unable to access an online system and this will help mitigate any potential adverse impacts on the digitally excluded.”¹⁴⁵

167. However, UNISON expressed concern that digital exclusion could be a problem, particularly in more rural areas. Cwlwm¹⁴⁶ and Mudiad Meithrin raised similar points, referring to “the need to enable individuals to receive support to complete the online form, and offering an option of a paper form where this is needed to enable the individual to complete it”.¹⁴⁷

¹⁴⁴ Explanatory Memorandum, para 9.3, p.53

¹⁴⁵ Explanatory Memorandum, para 9.4, p.53

¹⁴⁶ CYPE Committee, 24 May 2018, RoP [para 67]

¹⁴⁷ Written evidence, CCF 03 – Mudiad Meithrin

168. When asked about these issues, the Minister sought to reassure us that his department is “looking at aspects of those people who are digitally excluded, hence the parallel helplines and the person-to-person support”.¹⁴⁸

OUR VIEW ON THE RISK OF DIGITAL EXCLUSION

169. We believe that the risk of digital exclusion is a real one and needs to be monitored carefully by both the Welsh Government and HMRC as its agent. While we accept that arrangements will be put in place for both telephone and online application systems, we are concerned that the Explanatory Memorandum states that it is only “anticipated” that service levels and standards will be the same for both routes. We believe that this should be a requirement, not least because of the poor broadband coverage in many areas in Wales.

Recommendation 15. That the Welsh Government make more explicit its commitment to ensuring that the risks of digital exclusion are addressed, managed and monitored as part of any agreement with any delivery agent for the administration of the application and eligibility checking system created by this Bill.

5. 3. Arrangements after eligibility has been established

170. The Regulatory Impact Assessment within the Explanatory Memorandum has been undertaken on the basis that:

“Once parental eligibility has been determined, the parent is informed of the outcome [...] Once informed, the parent will be given a form of confirmation to take to a childcare provider to demonstrate their eligibility to take part in the Offer.”¹⁴⁹

171. It goes on to state:

“In England, the stage where a childcare provider can check the eligibility of a parent for funding under their childcare offer is owned and run by DfE. They have a validation system, whereby Local Authorities and some providers can confirm a parent’s eligibility remains valid prior to either offering the childcare or making payments in respect of childcare. This is one potential option available for the Welsh Government to explore for this part of the process. However, a

¹⁴⁸ CYPE Committee, 16 May 2018, RoP [para 157]

¹⁴⁹ Explanatory Memorandum, paras 6.14-6.15, p.27

decision is not required in the scope of this Bill and is therefore not considered in the RIA as alternative options have not yet been fully explored.”¹⁵⁰

172. Despite the assertion in the Regulatory Impact Assessment that post-eligibility arrangements are not a matter for this Bill, when speaking about the practical implementation of the Bill, the WLGA and ADEW warned “where the role of HMRC stops and where the role of local authorities begins is key”.¹⁵¹

173. Similarly, speaking on behalf of childcare providers, Cwlwm said:

“We know that there have been issues in England around the system—once HMRC have checked the eligibility, what happens after that point. That’s where the inconsistencies come in in England. I think that’s what’s important—whether that’s through regulations or other administration systems, that’s what needs to be very carefully thought out in Wales.”¹⁵²

174. The Minister confirmed in writing that whilst the Welsh Government currently provides a grant to EILAs, who in turn pay the providers for delivering the childcare offer under the pilot (similar to the process in England), this approach is currently under review. He also acknowledged that quick and timely payments would be essential for providers to manage their cash-flow, and that a number of options were under consideration, including:

- Local authorities continuing to make payments to providers;
- Welsh Government making payments to providers directly;
- A third party making payments to providers.¹⁵³

175. His written evidence went on to state “the payment system will not involve HMRC and will be developed separately to the application and eligibility checking system which we are aiming to deliver through the Bill”.¹⁵⁴

176. Despite the Minister’s emphasis on this being separate to arrangements for the Bill, when the WLGA’s concerns about practical arrangements were put to the Minister in the final oral evidence session, his official’s answer suggested that they

¹⁵⁰ Explanatory Memorandum, para 6.20, p.27

¹⁵¹ CYPE Committee, 6 June 2018, RoP [para 344]

¹⁵² CYPE Committee, 24 May 2018, RoP [para 17]

¹⁵³ Written evidence, FI CCF 01 – Welsh Government

¹⁵⁴ Written evidence, FI CCF 01 – Welsh Government

were intrinsically linked with the arrangements being made under the Bill with HMRC:

“...we need to work out when they [local government] would actually need to know that information [about eligibility] locally to make their decisions on place allocation [for early years education], and build that into what we’re doing with HMRC.”¹⁵⁵

OUR VIEW ON “POST-HMRC” ARRANGEMENTS

177. As noted in paragraph 87 of this report, we dispute the Welsh Government’s assertion that arrangements for the operation of the childcare offer after the application and eligibility checking system are “outwith”¹⁵⁶ the scope of this Bill.

178. We acknowledge that the Welsh Government has chosen to separate the payment system from the application and eligibility checking system to be administered under the Bill. However, in light of the evidence received from local authorities and providers about the importance of getting this part of the system right, we believe more clarity is needed about arrangements after HMRC has completed its work. If the childcare offer is to operate effectively, the arrangements for the paying of providers are arguably as important as getting the application and eligibility checking system right. As such, we are concerned that final decisions about the approach are being taken late in the day. We believe our recommendation 6, calling on the Welsh Government to place the administrative scheme on a statutory footing, will assist in this regard.

5. 4. Other potential barriers arising from the regulations made under the Bill and the broader childcare offer

179. A significant amount of the evidence submitted to us commented on issues relating to the broader childcare offer. While the Welsh Government has chosen not to specify the detail of the childcare offer on the face of the Bill, much of the detail relating to the offer will be provided in the regulations made under this legislation.

180. Stakeholders, when commenting on potential barriers to the Bill achieving its stated aims, cited some of the likely – and not insignificant – challenges arising from the broader childcare offer, including:

¹⁵⁵ CYPE Committee, 14 June, RoP [para 278]

¹⁵⁶ CYPE Committee, 14 June, RoP [paras 99 and 103]

- concerns from Oxfam Cymru,¹⁵⁷ childcare providers,¹⁵⁸ and Estyn¹⁵⁹ that the complexity of the system of applying to local authorities for the early years education elements of the offer and HMRC for the childcare elements could cause confusion, potentially affecting take-up;
- acknowledgment from the majority of witnesses that the need (in a large number of cases) to access early years education and childcare in different settings could cause difficulties for parents who are in work but need to transport their children from one setting to another. They accepted that this could potentially affect the take-up of the offer, in part or in whole, and frustrate the Welsh Government's stated aims for the Bill; and
- recognition, including from the Minister,¹⁶⁰ that permitting additional charges of up to £37.50 per week (£7.50 per day) for things such as meals could render the childcare offer challenging (and potentially unaffordable) for those on the lowest qualifying incomes.

181. These challenges – along with others identified in the evidence submitted in relation to the wider childcare offer – are explored in more detail in the *next chapter – the Bill's potential unintended consequences* and *chapter 8 – additional issues relating to the broader childcare offer*.

¹⁵⁷ Written evidence CCF 20 – Oxfam Cymru

¹⁵⁸ For example, see written evidence, CCF 03 – Mudiad Meithrin

¹⁵⁹ CYPE Committee, 6 June 2018, RoP [para 4]

¹⁶⁰ CYPE Committee, 14 June 2018, RoP [para 41]

6. The Bill's potential unintended consequences

Most of the unintended consequences identified in our evidence gathering either related to matters that will be defined in the regulations to be made under this Bill at a later date, or arise from the broader childcare offer.

Nevertheless, some direct unintended consequences of the Bill – particularly as a result of its focus on working parents only – were highlighted. These are considered in this chapter.

182. As stated earlier in this report, the specification on the face of the Bill that its provisions would apply only to the “qualifying children of working parents” was a source of significant discussion during our Stage 1 consideration. Part of these discussions related to the unintended consequences it might create, not least:

- its facilitation of a potentially complex dual stream of provision, and associated issues with the alignment of applications, due to all parents being able to access the early years education part of the childcare offer, but only working parents being able to access the childcare element; and
- its potential impact on equality and children’s rights, most notably in relation to child development, school readiness and educational attainment.

183. However, Chwarae Teg’s written evidence summarised the general view among stakeholders that the limited detail on the face of the Bill meant that most of the unintended consequences would arise from the regulations. For this reason, it emphasised the importance of assessing closely the detail of those regulations “to ensure that the Offer delivers on its aims and is agile enough to adapt should changes be required to eligibility criteria and processes”.¹⁶¹

6. 1. Dual stream of provision and the alignment of applications

184. A number of stakeholders raised concerns about the potentially complex dual stream provision that the Bill facilitates, through the addition of Welsh

¹⁶¹ Written evidence CCF 11 – Chwarae Teg

Government funded childcare for working parents of qualifying children on top of the existing provision of universal part-time early years education for 3 and 4 year olds.

185. The WLGA and ADEW explained:

“... local authorities will remain responsible for administering their systems for the provision of 10 hours of early years education entitlement. This means parents will have to apply separately to their local authority and to HMRC to access the full, combined, 30 hours of Foundation Phase Nursery provision and childcare. It will be important that the separate systems work together seamlessly for parents.”¹⁶²

186. Many of the childcare providers,¹⁶³ Oxfam Cymru,¹⁶⁴ and Estyn¹⁶⁵ raised the possibility that this could cause unintended confusion among parents in Wales. In its written evidence, Mudiad Meithrin explained:

“If the HMRC system is used, as the preferred option, to carry out the scheme checks, it must be ensured that parents and carers are aware of the local arrangements to apply for the 10 hours of early education that children are entitled to. We also note that the provision of early education hours is different across the counties, and parents will need to be provided with clear information about how many childcare hours that are available to them in each local authority.”¹⁶⁶

187. Cwlwm emphasised the importance of the alignment between the application process systems, particularly HMRC’s role in signposting parents to other support available:

“it’s vital that they [HMRC] do signpost parents towards the general offer, or universal offer for the nursery period in the foundation phase because, given that’s for everybody, they might have a note from HMRC saying that they’re not eligible for the entire 30 hours, but there needs to be something in that feedback that will point them back to the fact that they have the right to have the offer in the foundation phase and the educational element, and that they don’t think that they’re not eligible for anything because they’re not eligible for that additional

¹⁶² Written evidence, CCF 21 – WLGA and ADEW

¹⁶³ For example, see written evidence, CCF 03 – Mudiad Meithrin

¹⁶⁴ Written evidence CCF 20 – Oxfam Cymru

¹⁶⁵ CYPE Committee, 6 June 2018, RoP [para 4]

¹⁶⁶ Written evidence, CCF 03 – Mudiad Meithrin

element that comes under the 30 hours as well. That should be something that should be fed into the administrative systems—the reply from HMRC, which signposts them back to local authority departments that do administer the foundation phase element.”¹⁶⁷

188. When asked about the extent of signposting it could offer, HMRC’s representative confirmed:

“...the outputs that would go to an ineligible parent—there’s no reason at all why they cannot include what that parent is eligible for as well as what they’re not eligible for, and I expect them to do so.”¹⁶⁸

189. HMRC also pointed to its Childcare Choices website and explained that there was “no reason why that cannot be updated to include Welsh data as well”.¹⁶⁹

190. The Minister acknowledged the potential confusion and complexity that could arise as a consequence of the Bill’s creation of system in which parents apply to the local authority for early years education and to HMRC for childcare. However, he explained that even without the childcare offer, parents were already navigating a range of support. He highlighted that, as a consequence, the Welsh Government had funded a family information service within each local authority to give clear signposting between the different programmes.¹⁷⁰

191. In relation to the new childcare offer specifically, the Minister stated that a communication strategy was being developed and tested with the EILAs. He explained that the purpose of this strategy was to ensure that parents would be provided with information about not only early years education and the childcare offer, but also additional support such as the child tax credit.¹⁷¹

OUR VIEW ON THE ALIGNMENT OF APPLICATIONS FOR THE OFFER

192. We believe there is clear potential for added confusion and complexity to arise as an unintended consequence of this Bill’s provisions. While we recognise that parents are already expected to navigate a number of different programmes depending on their families’ circumstances, it is vital that the application system

¹⁶⁷ CYPE Committee, 24 May 2018, RoP [para 62]

¹⁶⁸ CYPE Committee, 24 May 2018, RoP [para 364]

¹⁶⁹ CYPE Committee, 24 May 2018, RoP [para 368]

¹⁷⁰ CYPE Committee, 14 June 2018, RoP [paras 109-110]

¹⁷¹ CYPE Committee, 14 June 2018, RoP [para 110]

accessed via HMRC is aligned seamlessly with those that already exist via local authorities.

Recommendation 16. That the Welsh Government work with HMRC and local authorities to outline, before the Stage 1 debate, what arrangements will be put in place to ensure that HMRC is able to signpost clearly parents to the other support they may be eligible to access. This should include an assessment of the feasibility (in terms of timescales, costs and clarity of information) of updating HMRC’s Childcare Choices website to include details of the Welsh offer.

193. We outline our views on the wider implications of the dual stream provision in *chapter 8 – additional issues relating to the broader childcare offer*.

6. 2. Child development, school readiness and educational attainment

194. The evidence we received in relation to the possible impact of the Bill’s focus on working parents on children’s development, school readiness and educational attainment is outlined in paragraphs 89 to 107 of this report. As explained in paragraphs 108 to 113, we have significant concerns about the unintended consequences this could have, and call on the Minister to address these concerns by accepting our recommendations 7 and 8.

Children’s rights

195. The Children’s Commissioner’s evidence was highly critical of the Children’s Rights Impact Assessment (CRIA) undertaken by the Welsh Government for this Bill.¹⁷² She told us:

“I’m concerned that although the CRIA does mention some general policy intent at the beginning, it then treats that policy intent very lightly in terms of saying that this is really just about the mechanism for paying parents. I’m particularly concerned that it doesn’t address article 2 [of the United Nations Convention on the Rights of the Child],¹⁷³ the right for all children to be treated equally, and one of the ways in which

¹⁷² Written evidence, CCF 02 – Children’s Commissioner for Wales

¹⁷³ The United Nations Convention on the Rights of the Child (UNCRC) is an international agreement that protects the human rights of children under the age of 18. The Rights of Children and Young Persons (Wales) Measure 2011 placed a duty on all Welsh Ministers to have due regard to the substantive rights and obligations within the UNCRC and its optional protocols.

they shouldn't be treated unequally is on the status of their parents' employment."¹⁷⁴

196. The Children's Commissioner elaborated:

"The other article I feel is glaringly unaddressed is article 29—the right to be assisted to achieve your potential. And again I feel that, by only concentrating on children who will receive this offer and not on children who will be excluded from this offer, it doesn't address the fact that it's not assisting children from the most disadvantaged backgrounds to achieve their potential."¹⁷⁵

197. In relation to article 3 of the UNCRC – which states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration – the Children's Commissioner said:

"I feel this whole policy intent behind this doesn't do that for the most disadvantaged children."¹⁷⁶

198. The Children's Commissioner's concluding written remarks on the CRIA stated that, without undertaking a better and more comprehensive analysis of the impact of the Bill's provisions on all children, "it is not possible for Ministers to understand whether or not the wording included on the face of the Bill is appropriate".¹⁷⁷

199. When Estyn was asked about the potential unintended consequences of the Bill's focus on working parents increasing the child development, school readiness and educational attainment gap, its representatives emphasised that:

- school readiness has a "broad" meaning, and refers to preparedness for learning more than the step to school itself;¹⁷⁸
- all 3 and 4 year olds have access to part-time early years education;¹⁷⁹ and

¹⁷⁴ CYPE Committee, 16 May 2018, RoP [para 262]

¹⁷⁵ CYPE Committee, 16 May 2018, RoP [para 262]

¹⁷⁶ CYPE Committee, 16 May 2018, RoP [para 264]

¹⁷⁷ Written evidence, CCF 02 – Children's Commissioner for Wales

¹⁷⁸ CYPE Committee, 6 June 2018, RoP [para 165]

¹⁷⁹ CYPE Committee, 6 June 2018, RoP [para 163]

- it should not be assumed that a child at home with a parent is disadvantaged, as “some of the research says that time with a mother who is well educated has huge advantages to a child”.¹⁸⁰

200. However, when challenged on the basis that significant evidence exists to show that children from poorer backgrounds are more likely to be less ready for school, Estyn replied:

“We recognise that international evidence points to the fact that, if the child requires intervention, the earlier the intervention is in place, the better the long-term prospects for that individual.”¹⁸¹

201. When asked whether any consideration had been given to the impact of the childcare offer’s arrangements on the school readiness of summer-born children – who would receive two fewer terms of childcare support before entering school than their older counterparts – Estyn responded that early years education is:

“...about the child’s stage of learning rather than their age, and the curriculum is designed as such then to ensure that children, whatever their starting point, develop at an appropriate pace, which is appropriate to them as individuals.”¹⁸²

202. In respect of summer-born children, the Children’s Commissioner said there was “a whole other debate [about equalities] to be had as to whether we should keep a rigid expectation for summer children to start full-time school in September” but that the EILAs should be asked to look at this and seek feedback on the impact from parents.¹⁸³

203. The Minister indicated to us that work was underway within the Welsh Government to look at “the whole piste” of early years childcare development. He emphasised, however, that this work was not starting from a “blank sheet” and that “a tremendous amount” of support was already in place for all children.¹⁸⁴

¹⁸⁰ CYPE Committee, 6 June 2018, RoP [para 167]

¹⁸¹ CYPE Committee, 6 June 2018, RoP [para 169]

¹⁸² CYPE Committee, 6 June 2018, RoP [para 8]

¹⁸³ CYPE Committee, 16 May 2018, RoP [paras 255 and 257]

¹⁸⁴ CYPE Committee, 14 June 2018, RoP [para 28]

OUR VIEW ON ASSESSING IMPACT ON CHILDREN'S RIGHTS

204. Our concerns about the Welsh Government's approach to assessing the impact of its decisions on children's rights are well documented.¹⁸⁵ We believe that CRIAs should inform meaningful policy approaches, and not simply provide a basic reflection towards the end of a process.

205. To hear the CRIA for this Bill described as "really thin" by the Children's Commissioner causes us significant concern. This is particularly so given the scale of investment in the childcare offer this legislation facilitates and the potentially significant unintended consequences it could have in terms of increasing the child development, school readiness and educational attainment gap between our most advantaged and disadvantaged children.

206. While the Welsh Government has focused its impact assessments on the administrative framework created by the Bill, we believe that the inclusion of both the words "working parents" and the broad regulation-making powers mean that the impact assessments for this Bill should have been much wider.

207. The Explanatory Memorandum states that the CRIA "will be revisited after stage 1 of the Bill's passage through the National Assembly".¹⁸⁶ We believe that, based on the evidence we have heard, this revised CRIA should be wider in its breadth and capture the impact of this Bill's focus on working parents on *all* children, not only those who are eligible for childcare funding under its provisions. The revised CRIA should be published before the start of Stage 3, to afford Members sufficient opportunity to propose and consider any amendments to the Bill to reflect its findings.

208. We believe that further work is also needed to establish the impact current arrangements for the childcare offer could have on summer-born children.

Recommendation 17. That the Welsh Government make available, before the start of Stage 3, a revised Child Rights Impact Assessment (CRIA). This CRIA should consider the Bill's impact on *all* children, not just those eligible under its provisions for the childcare offer. This is particularly important in light of the Children's Commissioner's concerns that an unintended consequence of the Bill's focus on qualifying children of working parents could be an increase in the

¹⁸⁵ See, for example, CYPE Committee, [Report on the Welsh Government's Draft Budget 2018-19](#), December 2017, and CYPE Committee, [Letter from the Chair to the Welsh Government relating to budget information and CRIAs](#), 15 May 2018

¹⁸⁶ Explanatory Memorandum, p.54

child development, school readiness and educational attainment gap between our most advantaged and disadvantaged children.

Recommendation 18. That the Welsh Government ensure that, as part of the evaluation of the childcare offer pilot's roll-out, information to assess the impact of its arrangements on summer-born children is gathered, analysed, and used to inform the shape of the childcare offer that is eventually rolled out nationally.

7. The Bill's financial implications

Limited evidence was received on the Bill's funding and financial implications. Information submitted in relation to the Bill's financial implications related to the costs associated with the administration of the application and eligibility checking system. Given the limited detail on the face of the Bill, questions arose about the extent to which costs could increase if changes to eligibility required adaptations to HMRC's system and led to an increase in the volume of applications. This chapter considers these and associated matters.

7. 1. The Bill's costs

209. The Bill's Regulatory Impact Assessment (RIA) sets out the four options for administering applications and eligibility checks for the childcare offer, and the Welsh Government's evaluation of each.

210. The Welsh Government estimates that its preferred option of contracting HMRC as its agent to administer the scheme will cost £9.12 million between 2019-20 and 2024-25.¹⁸⁷ Once initial transition costs of £3.6m are met in 2019-20, it estimates the annual costs to be no more than £1.13 million.¹⁸⁸ The estimated costs of the other three options range from £15.55 million¹⁸⁹ to £26.83 million¹⁹⁰ over the same timeframe.

211. The RIA refers to the administration of the scheme only, not the childcare offer, the "working figure" for which has been estimated at approximately £100 million per year.¹⁹¹

¹⁸⁷ Explanatory Memorandum, p.43

¹⁸⁸ Explanatory Memorandum, p.43

¹⁸⁹ Explanatory Memorandum, p.46

¹⁹⁰ Explanatory Memorandum, p.40

¹⁹¹ CYPE Committee, 22 November 2017, RoP [para 39]

The estimated number of eligible children

212. The Welsh Language Commissioner raised concerns about the accuracy of the figures on which the Welsh Government based its calculations of the number of eligible children:

“Whilst there are 70,000 3-4 year old children in Wales, some of these are already enrolled in reception classes in schools (as they had their 4th birthday before the 1st September). It is possible that the current projections on the number of eligible children is overestimated, as too the estimated costs of the childcare offer.”¹⁹²

OUR VIEW ON THE BILL'S COSTS

213. The figure of 40,000 eligible children is the basis for the Explanatory Memorandum's calculations of the costs of the administration of the application and eligibility checking system (as well as to the childcare offer more broadly). Given the Welsh Language Commissioner's concerns, we would welcome clarification from the Welsh Government of how it arrived at the figure of 40,000.

Recommendation 19. That the Welsh Government set out in advance of the Stage 1 debate:

- how the number of children that would be eligible in terms of their parents working was calculated to be 40,000, as stated in the Explanatory Memorandum; and
- whether an attempt was made to estimate the number of children who would be eligible in the term after their third birthday, or whether only the total number of three year olds (plus four year olds) was used.

7. 2. The impact of changes to regulations

HMRC costs

214. As noted in section 5.1 of this report, the costs associated with HMRC's administration of the application and eligibility checking system created by this Bill could change if the detail of the regulations made under the Bill, particularly those relating to eligibility, differed substantially from the intentions set out in the Explanatory Memorandum.

¹⁹² CYPE Committee, 28 June 2018, [Paper to note 5](#)

215. HMRC’s representative recognised that the regulations could change significantly and stated:

“We know the scheme is being trialled in Welsh local authorities at the moment, and we’ve spoken to the Welsh Government about what sort of scheme they’re looking to provide. A lot of these things need to be sorted out when we go through the discovery phase of what tweaks we need to make to the childcare service to actually provide the Welsh version of the scheme. They don’t have to be exactly the same, but obviously, any parts that are different will need to be tweaked. [...] Obviously, any differences would need to be paid for. They might make the scheme more difficult to deliver, but we’ll just talk between us and the Welsh Government to sort it out.”¹⁹³

216. When questioned on how these changes and costs would be discussed and agreed, HMRC’s representative said:

“I would expect a memorandum of understanding to address how the two parties would try and work out how any changes should be done. Depending on what the changes were and what impact they had on the IT, there might well be a cost to the changes, and if there’s a cost to the changes then the Welsh Government would have to pay that cost.”¹⁹⁴

217. The Chief Secretary to the Treasury’s letter to the Welsh Government regarding consents stated that any changes would “generate further costs” and would “necessitate separate agreements and would need to be covered by a new MoU”.¹⁹⁵

Costs to local authorities

218. The Bill as introduced does not place any new statutory duties on local authorities. Nevertheless, it includes a power in section 7 to “confer functions or impose obligations upon a local authority in connection with funding under section 1 [funding of childcare for children of working parents]”.¹⁹⁶

¹⁹³ CYPE Committee, 24 May 2018, RoP [para 278]

¹⁹⁴ CYPE Committee, 24 May 2018, RoP [para 352]

¹⁹⁵ ~~Correspondence from the Minister for Children, Older People and Social Care to Llywydd~~, 9 July 2018

¹⁹⁶ Childcare Funding (Wales) Bill [as introduced]

219. In its written evidence, the WLGA and ADEW stated:

“Where such legislation is made that may impact on local government, the WLGA hopes that WG will consult with local government on the details as and when appropriate. Should such legislation impose any new obligations on local authorities, the WLGA hopes that WG will ensure any financial implications are fully costed and appropriately funded.”¹⁹⁷

OUR VIEW ON THE COSTS OF CHANGES TO REGULATIONS

220. We reiterate our comments earlier in this report that:

- the lack of detail on the face of the Bill makes it difficult to comment on the costs and impact of its provisions without sight of the relevant regulations that will be made under it; and
- the Chief Secretary to the Treasury’s letter, dated 14 March 2018, and which includes important information about HMRC’s position in relation to the costs associated with any changes to regulations, should have been shared earlier than 7 working days before our reporting deadline.

221. Our view in relation to the possible changes to the HMRC’s costs and the need for a revised RIA in such circumstances are outlined in paragraphs 162 to 164 and recommendation 14 of this report.

222. In relation to possible future costs for local authorities, we believe that any new obligations imposed on local authorities in relation to this Bill should be accompanied by the necessary amount of funding to deliver them.

Recommendation 20. That the Welsh Government ensure that any new obligations imposed on local authorities in relation to this Bill are accompanied by the necessary amount of funding to deliver them.

¹⁹⁷ Written evidence, CCF 21 – WLGA and ADEW

8. Additional issues relating to the broader childcare offer

Much of the evidence we received during our consideration of the general principles of this Bill related to the childcare offer. This chapter outlines matters drawn to our attention that could arise should the Bill progress, or should an alternative, non-legislative mechanism for national roll-out of the childcare offer be adopted. Given that the regulations to be made under this Bill could be used – or the Bill amended – to address any or all of these issues, we make a series of recommendations we believe should be implemented as part of the Welsh Government’s work on its childcare offer.

8. 1. Creation of a dual stream of provision

223. Estyn’s written evidence summarised some of the concerns drawn to our attention in relation to the “two-stream” nature of the childcare offer:

““Where education and care are provided on different sites, parents may find it logistically difficult to transfer their child during the day. If a setting does not offer education, some parents may prefer to pay for additional care in one setting so that their child has continuity of provision. Where children do not receive their entitlement to good quality funded education there could be an adverse impact on child development.”¹⁹⁸

Transportation between sites

224. Concerns about the logistical difficulties of transporting children between sites that provide early years education and sites that provide childcare were raised in evidence. Chwarae Teg explained:

“While some LAs [local authorities] support the delivery of the Foundation Phase [early years education] in a non-maintained setting,

¹⁹⁸ Written evidence, CCF 07 – Estyn

this is not the case in all areas. As a result some parents will still face the challenge of moving children between two providers during the day. This has the potential to limit the impact of the new Offer in terms of supporting more women into work or to increase their hours.”¹⁹⁹

225. Representatives of the WLGA acknowledged the importance of looking at matters relating to both health and safety and quality of care in relation to the transporting of children from one site to another.²⁰⁰ Estyn’s representatives recognised that “for a young child, being bussed around is probably not a productive use of time and not necessarily good for their well-being”.²⁰¹

226. However, Estyn emphasised that co-location of services and partnership working was already underway in parts of Wales because:

“...the challenge is there already. There are parents who are accessing the foundation phase 10 hours and then arranging other childcare that involves transporting children between them. It’s not unique to the childcare offer.”²⁰²

227. When asked who was responsible for inspecting the transportation of children from one site to another, Estyn said they were “not observing that movement of young children from one site to the other as part of [their] routine inspection activity”.²⁰³ Care Inspectorate Wales confirmed that they would look at transportation for registered providers.²⁰⁴

228. Responding to concerns about the childcare offer increasing the number of children being transported between early years education and childcare sites, the Minister said:

“...this isn’t new, and many parents are used to this idea of doing some sort of handovers or either organising their own wraparound, which is sometimes provided by their own relatives, or friends or neighbours [...] Alternatively, existing childcare providers find a way to link up with different settings, so after-school provision, school settings, Flying Start settings and so on. It is difficult, but we’re working from a situation that is already there on the ground. However, I think we can do more, and

¹⁹⁹ Written evidence, CCF 11 – Chwarae Teg

²⁰⁰ CYPE Committee, 6 June 2018, RoP [para 414]

²⁰¹ CYPE Committee, 6 June 2018, RoP [para 26]

²⁰² CYPE Committee, 6 June 2018, RoP [para 137]

²⁰³ CYPE Committee, 6 June 2018, RoP [para 133]

²⁰⁴ CYPE Committee, 6 June 2018, RoP [para 204]

that's one of the things that we're learning from these initial phases already.”²⁰⁵

229. The Minister went on to note that to address these challenges, there should be a focus in future on increasing co-location and collaboration in maintained and non-maintained settings. This, he argued, would enable more provision of both elements of the childcare offer in one location.²⁰⁶

Impact on early years education

Take up of early years education

230. A number of witnesses highlighted the potential for the childcare offer to affect take-up of the existing early years education. As well as the difficulties in relation to transporting children between sites described above,²⁰⁷ this was attributed to the variation in the rates of payment between early years education and childcare.

231. In relation to the challenges posed by the variation in funding rates, Cwlwm's representatives explained:

“There are 22 different funding systems for foundation phase [early years education], and so to some providers the childcare offer looks very attractive at £4.50 an hour, because they're getting a lot less per hour for delivering foundation phase nursery.”²⁰⁸

232. In subsequent written evidence, Cwlwm, the WLGA and the Welsh Government acknowledged the varying average hourly rates paid for non-maintained early years education, confirming they were all less than the £4.50 per hour that the Welsh Government intends to pay for the childcare elements of the offer:

- The Welsh Government stated that while “data is limited”, figures suggest that the highest average hourly rate paid for non-maintained early years education is £4.47 while the lowest is £2.50.²⁰⁹ It also

²⁰⁵ CYPE Committee, 14 June 2018, RoP [para 112]

²⁰⁶ CYPE Committee, 14 June 2018, RoP [para 113]

²⁰⁷ CYPE Committee, 24 May 2018, RoP [para 64]

²⁰⁸ CYPE Committee, 24 May 2018, RoP [para 122]

²⁰⁹ Written evidence, FI CCF 07 – Welsh Government

recognised that maintained and non-maintained settings are paid at different rates.²¹⁰

- Cwlwm quoted £4.24 (in Cardiff) as the highest average hourly rate, and £1.49 (in Gwynedd) as the lowest.²¹¹
- The WLGA responded to a request for a breakdown of hourly rates by explaining that most local authorities do not pay non-maintained early years education providers based on hourly rates.²¹² The WLGA stated that where hourly rates are paid, these range between £3 and £3.50.²¹³

233. Care Inspectorate Wales warned:

“Care will need to be taken to ensure the implementation of the Bill does not undermine the delivery of the Foundation Phase in funded non maintained settings, for example, by incentivising providers to respond to the demand for the offer at the expense of the Foundation Phase.”²¹⁴

234. Estyn²¹⁵ and Clybiau Plant Cymru Kids’ Clubs²¹⁶ voiced similar concerns about inconsistent payment rates and their possible impact on early years education. Estyn’s representatives confirmed that disparities in rates are widespread between local authorities, between the non-maintained and maintained sector, and between early years education, childcare offer and Flying Start programmes.²¹⁷ They went on to summarise Estyn’s view as follows:

“We are concerned that parents may make a choice. So, if it’s logistically quite difficult for them to move children around, 20 hours’ childcare may become more attractive than the 10 hours’ education.

²¹⁰ Written evidence, FI CCF 07 – Welsh Government

²¹¹ Written evidence, FI CCF 03 – Cwlwm

²¹² The WLGA listed a variety of methods for paying settings, including via: the Age Weighted Pupil Unit, with rates varying per local authority; a flat rate per child per term ranging from £290 to £900; a flat rate per setting per term up to 8 children with additional amount per additional child; in line with individual provider rate (unrelated to school rate); a flat rate per week per child; funding staff in the settings to meet the required ratios; and funding for a set number of purchased places.

²¹³ Written evidence, FI CCF 05 – WLGA

²¹⁴ Written evidence, CCF 16 – Care Inspectorate Wales

²¹⁵ Written evidence, FI CCF 07 – Estyn

²¹⁶ Written evidence, FI CCF 07 – Clybiau Plant Cymru Kids’ Clubs

²¹⁷ CYPE Committee, 6 June 2018, RoP [paras 83-88]

And for settings it may be more attractive to offer the childcare part of the offer rather than the education part, in local authorities where there isn't parity of funding for the two."²¹⁸

235. Social Care Wales stated "parity in payment rates would be welcomed".²¹⁹

236. The WLGA gave examples of where co-location of services had been developed to overcome transportation challenges.²²⁰ In relation to the impact of the disparity in rates of payment, representatives acknowledged that the "crowding out" of early years education by the childcare element of the offer had been a "worry" for EILAs. Nevertheless, they cited the experience of Caerphilly County Borough Council, where one provider had been lost from early years education because that provider considered the childcare offer more profitable, but four others had been gained because they:

"...saw it as a unique selling point to be able to offer the whole provision [...] they see it as consistency for the child that they can have their foundation phase provision of 10 hours and then have their 20 hours as well for working parents. So it's given parents more options."²²¹

237. Responding to concerns about the possible impact of the childcare offer on the take-up of early years education, the Minister emphasised that the Welsh Government did not wish to undermine "in any way" early years education but conceded that it was a risk.²²²

238. In relation to the hourly rate for non-maintained settings, he said:

"We are aware of the issues around the hourly rate [...] although we're not picking up at the moment that that is causing any real difference to the roll-out at the moment, where people are fleeing in the early implementers from foundation phase elements."²²³

239. He went on to state:

"What this has flagged up, I think, in the early months of the early implementers, is it's not simply the hourly rate, but it's the practical

²¹⁸ CYPE Committee, 6 June 2018, RoP [paras 129-130]

²¹⁹ Written evidence, CCF 14 – Social Care Wales

²²⁰ CYPE Committee, 6 June 2018, RoP [paras 408-410]

²²¹ CYPE Committee, 6 June 2018, RoP [para 403]

²²² CYPE Committee, 14 June 2018, RoP [para 140]

²²³ CYPE Committee, 14 June 2018, RoP [para 141]

choices that are made by providers and parents. It's not the hourly rate per se. If we can make it easy for both offers to be provided, either on the same site, or within spitting distance [...] parents will say 'No problem', providers will say 'No problem'. But we've got to make that work."²²⁴

240. Further information provided by the Cabinet Secretary for Education, who is responsible for the early years education element of the childcare offer, stated:

"We are looking closely at the possible impact on Foundation Phase provision – including structural and financial issues that might impact on effective delivery and the quality of provision [...]"

I recognise that there are risks and opportunities presented by the introduction of the Childcare Offer. Officials across the Welsh Government have been working closely to ensure that these are explored fully and well understood as we continue to roll out the Childcare Offer across Wales."²²⁵

The number of early years education hours offered by local authorities

241. All local authorities have a statutory duty to provide free "sufficient nursery education" for all children in their area from the term following their third birthday, should their parents want it.²²⁶ On the basis of guidance issued in 1999,²²⁷ most authorities have interpreted this as meaning a minimum of 10 hours of early years education should be provided. Annex C to this report shows the number of hours of early years education offered by each local authority in Wales (which ranges from 10²²⁸ to 30 hours).

²²⁴ CYPE Committee, 14 June 2018, RoP [para 141]

²²⁵ Written evidence, FI CCF 07 – Welsh Government

²²⁶ The Education (Nursery Education and Early Years Development and Childcare Plans)(Wales) Regulations 2003 further amended by The Education (Nursery Education and Early Years Development and Childcare Plans)(Wales)(Amendment) Regulations 2005; and Sections 117-118 of the School Standards and Framework Act 1998

²²⁷ Welsh Office 1999/2000 Guidance for Local Early Years Development and Childcare Partnerships in Wales, which states "[...] the provision of a free, at least half-time, good quality, education place during the three terms before the start of compulsory education for every 4 year old whose parents want this. It should be as accessible as possible to the child's home. Half-time means a minimum of 10 hours a week for around the same number of weeks as the normal school year".

²²⁸ WLGA clarified by email, subsequent to the submission of this information, that early education hours in Cardiff are 12.5 hours in the maintained and non-maintained sector (5 x 2.5 hours). Some parents choose to take only 3 or 4 in the non-maintained sector, in which case the local authority

242. In light of concerns about the impact of the childcare offer on early years education, and the fact that the 10 hours of early years education is not specified in statute, we explored whether there was a risk that local authorities could reduce this entitlement as a result of the childcare offer. This was a particular concern in relation to the impact it could have on children in non-working households, who would not be eligible for the childcare element of the offer as the Bill is currently drafted.

243. When asked if the childcare offer could lead to a reduction in the number of early years education hours offered by local authorities, the Minister told us:

“Theoretically it could happen, but we’re having no indication from local authorities that they want to do this.”²²⁹

244. While the Minister and his officials stated that the Welsh Government funds local authorities to provide 10 hours of early years education, the bulk of this funding is provided via the Revenue Support Grant and, as such, is not ring-fenced. Written information submitted by the Cabinet Secretary for Education stated, however, that:

“Local Authorities must be able to confirm that the distribution formula for the funding supports schools and settings to deliver the Foundation Phase in accordance with the [appropriate level of practitioner and learner] ratios.”²³⁰

245. The Cabinet Secretary’s written evidence also stated:

“We have not received any evidence of Local Authorities currently delivering less than, or intending to deliver less than 10 hours, with many Local Authorities offering over the 10 hours.”²³¹

Inspection arrangements

246. Current arrangements for inspecting childcare and early years education mean that there are potentially three different inspection systems for the full 30 hours of the childcare offer:

will pay only for the sessions they have. The minimum permissible is 3 x 2.5 hours, hence the stated range for Cardiff being from 7.5 to 12.5.

²²⁹ CYPE Committee, 14 June 2018, RoP [para 182]

²³⁰ Written evidence, FI CCF 07 – Welsh Government

²³¹ Written evidence, FI CCF 07 – Welsh Government

- Only Estyn will inspect maintained settings that deliver the early years education entitlement;
- Both Estyn and Care Inspectorate Wales will inspect non-maintained settings which deliver the 10 hours education entitlement;
- Only Care Inspectorate Wales will inspect non-maintained settings which deliver only the 20 hours childcare.

247. Estyn confirmed that it has developed a joint inspection framework with Care Inspectorate Wales for the approximately 600 non-maintained settings providing early years education, and that this would be rolled out following a recent pilot, from January 2019.²³²

248. According to Estyn, the joint inspection approach has not only benefited the Inspectorates, but has lessened the burden on providers.²³³ Cwllwm confirmed that while the joint inspection approach was in its infancy, feedback from providers was positive.²³⁴

249. Care Inspectorate Wales alluded to the significant amount of learning yet to be completed about how the childcare offer will develop, and that the question of how joint inspecting should develop in future should be considered.²³⁵ Following the session, Care Inspectorate Wales provided a copy of the independent review of the joint inspection framework, commissioned with Estyn, where lessons learned and actions for future improvement are listed.²³⁶

250. Representatives from ADEW agreed that “serious consideration” should be given to reducing the complexity surrounding three streams of inspection.²³⁷

251. When asked about some of the complexities associated with inspecting the childcare offer, Welsh Government officials said they were “not unsympathetic” to points made. The Minister stated:

“...we’re already doing work with CIW and Estyn to look at how we can both integrate the inspections but also integrate the production of the reports that flow from those as well to make it more streamlined.”²³⁸

²³² CYPE Committee, 6 June 2018, RoP [para 143]

²³³ CYPE Committee, 6 June 2018, RoP [para 147]

²³⁴ CYPE Committee, 24 May 2018, RoP [paras 140-141]

²³⁵ CYPE Committee, 6 June 2018, RoP [para 316]

²³⁶ *Independent Evaluation of Estyn/CSSIW Joint Inspection Pilot*, November 2016

²³⁷ CYPE Committee, 6 June 2018, RoP [para 464]

OUR VIEW ON THE DUAL STREAM

252. In paragraph 203 of this report we referred to the Minister's indication that work was underway within the Welsh Government to look at "the whole piste" of early years childcare development. We believe that the evidence provided on the impact of the childcare offer in relation to the transporting of children from one site to another, the possible impact on the provision and take-up of early years education, and the complex system of inspection, illustrates the need for this work to be undertaken at pace.

253. We recognise that the issues highlighted about transportation and inspection already exist regardless of the childcare offer's roll-out. Nevertheless, if the Bill achieves its stated aim of increasing the number of parents who are able to return to work or extend their hours in work, the scale of these challenges are likely to grow significantly as the number of children accessing support increases.

254. Issues relating to the rate of payment for the various government-funded programmes available are a matter of significant concern to us. We do not understand the basis on which payment for early years education can be as markedly lower than the proposed rate of £4.50 per hour for childcare. While evidence has not yet emerged from the pilot areas that non-maintained providers are switching from early years to childcare provision, we believe there is a risk that this could occur.

255. The evidence is clear that early years education is crucial to a child's later development and attainment. We therefore have significant concerns about the suggestion that parents, in instances where they are unable to find co-located or wraparound provision and cannot transport their children from one site to another due to work commitments, may choose childcare over early years education on the basis that more of it will be available under the childcare offer. We further note that, under existing arrangements, childcare will not be inspected by Estyn.

Recommendation 21. That the Welsh Government set aside a proportion of its budget for the childcare offer to provide additional support between now and the offer's roll-out to facilitate an increase in the co-location of childcare and early years education provision. This should include incentives for the non-maintained sector to increase its provision of early years education.

²³⁸ CYPE Committee, 14 June 2018, RoP [para 128]

Recommendation 22. That the Welsh Government undertake a review of the cost/rates of payment across maintained and non-maintained settings for childcare, early years education, and the childcare element of Flying Start. Particular attention should be given to increasing the consistency between the hourly rate paid for early years education and childcare.

Recommendation 23. That the Welsh Government issue revised guidance to local authorities defining the meaning of “sufficient nursery education”, to guard against any risk of less than the current amount of early years education being offered by each local authority once the childcare offer is in place.

Recommendation 24. That the Welsh Government work with Care Inspectorate Wales and Estyn to reflect and implement the lessons learned from the evaluation of the joint-inspection framework, with a view to considering more streamlined arrangements.

8. 2. Maternal employment rates

256. The stated primary purpose of the Bill²³⁹ – and the wider childcare offer²⁴⁰ – is to support the Welsh economy by helping parents, particularly mothers, to return to work or increase the hours they work.

257. However, a Welsh-Government-commissioned 2015 report on Childcare Policy Options for Wales found that the proposed policy would have “no substantial impacts on net income, poverty or work behaviour for families with children” and that:

“...the impact on work participation and work hours for mothers in families with a child of target age is extremely small.”²⁴¹

258. Responding in April 2018 to questions about the 2015 report’s findings, the Minister referred to “real life evidence” from the EILAs that the childcare offer was enabling women to make better choices about when they work.²⁴² He also pointed to the fact that the 2015 report considered a 38 week, rather than a 48 week offer, stating:

²³⁹ Explanatory Memorandum, para 3.5, p.8

²⁴⁰ Welsh Government, Childcare Offer - Guidance for Early Implementer Local Authorities, November 2017, p.6

²⁴¹ Public Policy Institute for Wales (now known as the Wales Centre for Public Policy), Childcare Policy Options for Wales, December 2015, p.2

²⁴² CYPE Committee, 18 April 2018, RoP [para 172]

“...we are having parents already saying to us that their ability to actually extend that into the 48 weeks – beyond the term time and so on – carries advantages that are not picked up in that report.”²⁴³

259. The Minister had previously referred to the findings of the OECD’s Starting Strong 2017 research, which found that “affordable and quality early years education and care with an adequate number of hours per week can contribute to increased participation of women in the labour force”.²⁴⁴ However, he did not refer to the findings in the same research that the relationship between maternal employment and childcare rates is strong for 0-3 year olds, but weaker for 3-5 year olds.²⁴⁵

260. The most recent Welsh Government National Survey for Wales found that the demand for childcare is highest between the ages of 1 and 3.²⁴⁶

261. A number of stakeholders questioned the impact of the childcare offer in its current form on maternal employment. UNISON explained:

“...by the time the child has reached three years old, the parent(s) eligible for the childcare offer may have already been forced to make key changes to their working life, such as changing job, going part time etc.

Parents not in employment when their child becomes eligible for the offer will have out of the workforce for three years, may have lost confidence, and experience a skills or knowledge gap.”²⁴⁷

262. Chwarae Teg acknowledged that the lack of affordable and flexible childcare was a “key issue”²⁴⁸ for most mothers when deciding on whether to return to work, but that the childcare offer as currently framed provided that care “too late”.²⁴⁹

²⁴³ CYPE Committee, 18 April 2018, RoP [para 175]

²⁴⁴ OECD, *Starting Strong 2017: Key OECD Indicators on Early Childhood Education and Care*, June 2017, p.30

²⁴⁵ OECD, *Starting Strong 2017: Key OECD Indicators on Early Childhood Education and Care*, June 2017, p.31

²⁴⁶ Statistics for Wales, *Statistical Bulletin: National Survey for Wales 2016-17, Childcare*, released 30 January 2018, p.3

²⁴⁷ Written evidence, CCF 10 - UNISON

²⁴⁸ CYPE Committee, 24 May 2018, RoP [para 209]

²⁴⁹ CYPE Committee, 24 May 2018, RoP [para 198]

263. However, Cwlwm representatives stated that the childcare offer was an “initial step” on the “journey of increasing the rate of the employment of parents” and that it was “important to start somewhere”.²⁵⁰ They went on to say:

“We know that the cost of childcare is a major barrier to returning to work and that the UK has the highest fees in Europe, so funded childcare, even for three and four-year-olds, must impact on maternal employment rates.”²⁵¹

264. WLGA representatives referred to experiences in Caerphilly, which is an EILA, where they are observing a “shift in culture” among some families in Flying Start areas. They noted that parents there are beginning to become more involved in employment programmes and contracts in order to be able to take up the childcare offer, but recognised that progress would take “a long time”.²⁵²

265. Evidence submitted to the Equality, Local Government and Communities Committee’s inquiry into pregnancy, maternity and work suggested that the offer should be available from six,²⁵³ nine,²⁵⁴ or twelve months old²⁵⁵ to achieve most impact on maternal employment. On that basis, its recent report “Work it out: parenting and employment in Wales” recommended that the Welsh Government:

- collect data on maternal employment rates as part of the childcare offer pilots to inform the evaluation of its impact;
- set out the further steps it will take to address the need for childcare of 1 to 3 year olds; and
- reassess the offer to take account of the evaluation, international research and evidence provided to its inquiry.

OUR VIEW ON MATERNAL EMPLOYMENT

266. We recognise that if the childcare offer were to have its intended effect there could be significant benefits not only to the families involved, but to the fiscal dividend that could be generated as a consequence. However, we are not convinced that the childcare offer as currently framed targets the correct age

²⁵⁰ CYPE Committee, 24 May 2018, RoP [para 111]

²⁵¹ CYPE Committee, 24 May 2018, RoP [para 112]

²⁵² CYPE Committee, 6 June 2018, RoP [para 421]

²⁵³ ELGC Committee, 19 April 2018, [para 171]

²⁵⁴ ELGC Committee, 19 April 2018, [para 383]

²⁵⁵ ELGC Committee, 9 May 2018, [para 105]

group of children if its aim is to improve parental, especially maternal, employment rates. We are concerned that by their children's third birthdays, most parents will have already been forced to make decisions relating to their employment and careers in order to manage after their maternity and/or paternity leave allowances have ended.

267. Recommendation 10 of our report outlines our view on the steps that need to be taken in relation to reviewing the age of the “qualifying child”. We also support the recommendations relating to the childcare offer made in the Equality, Local Government and Communities Committee’s report on its inquiry into pregnancy, maternity and work, summarised in paragraph 265 of this report.

Recommendation 25. That the Welsh Government, in advance of the Stage 1 debate, accept the Equality, Local Government and Communities Committee’s recommendations relating to the childcare offer in its report on its inquiry into pregnancy, maternity and work.

8. 3. Additional charges

268. The Welsh Government’s guidelines for the childcare offer EILAs allow providers to charge additional fees to parents of no more than £37.50 a week. This amounts to £7.50 a day and is based on the cost of three meals a day at £2.00 per meal and 2 snacks at a charge of 75p per snack.²⁵⁶

269. When asked whether providers were using additional charges to “top up” the hourly payment rate for childcare, Cwlwm said there had been “some evidence” in one EILA of day nurseries charging where parents had not been charged previously.²⁵⁷ Conversely, they noted that others may not be charging in order to attract more parents’ business.²⁵⁸ Cwlwm noted that more work needed to be done as part of the evaluation of the childcare pilot offer to assess the impact of the additional charges²⁵⁹ and concluded:

“...we need to ensure that childcare doesn’t become too expensive for what should be a funded childcare programme.”²⁶⁰

²⁵⁶ Welsh Government, Childcare Offer - Guidance for Early Implementer Local Authorities, November 2017, p.15

²⁵⁷ CYPE Committee, 24 May 2018, RoP [para 96]

²⁵⁸ CYPE Committee, 24 May 2018, RoP [para 100]

²⁵⁹ CYPE Committee, 24 May 2018, RoP [para 98]

²⁶⁰ CYPE Committee, 24 May 2018, RoP [para 100]

270. When Care Inspectorate Wales was asked if the additional charges could make the childcare offer unaffordable for some families on low incomes, its representative said:

“I think the honest, straight answer to that is that’s entirely conceivable, yes, given what we know about income and poverty and deprivation in some parts of Wales. That would seem a reasonable surmise to make.”²⁶¹

271. In response to questions about the additional charges the Minister explained that the interim evaluation of the childcare offer pilots had not considered the effect of the additional charges. He stated, however, that arrangements would be kept under review and “if it comes back that it is a barrier, then we will look and learn from that”.²⁶²

272. On 2 July 2018, following completion of our evidence gathering on this Bill, the Welsh Government published revised Guidance for EILAs which will come into effect in September 2018. The revised guidance has been amended in respect of additional charges to say:

“Providers should not charge parents who access the offer more for any additional elements than they charge parents who are not accessing the offer. For example, providers who normally charge £5 a day for meals should not increase this charge to £7.50 for parents accessing the offer. Similarly, if a provider usually charges £5 for transport they should not increase these charges for parents accessing the offer.”²⁶³

OUR VIEW ON ADDITIONAL CHARGES

273. We are very concerned that up to £162.50 per calendar month in additional charges could render the childcare offer unaffordable for the lowest paid working parents with children of qualifying age. Nevertheless, we believe that creating a system that would exempt some parents from additional charges could lead to more complexity and unnecessary bureaucracy.

274. We note that the 2018 revised guidance for EILAs, when compared to the 2017 guidance, has been amended in respect of additional charges to say:

²⁶¹ CYPE Committee, 6 June 2018, RoP [para 280]

²⁶² CYPE Committee, 14 June 2018, RoP [paras 36 and 41]

²⁶³ Welsh Government, Childcare Offer – Revised Guidance for Early Implementer Local Authorities, July 2018, p.17

“Parents accessing the childcare offer should not, as a condition of their child’s attendance be required to take and pay for the provider’s food and may opt to provide packed meals., *if the setting would normally allow this* (amendments in italics).”²⁶⁴

275. We question how many non-maintained providers “normally allow” parents to bring their own food for children, and the potential concerns in respect of refrigeration, allergies and hygiene.

276. We also note the 2018 guidance has been amended to include the addition referred to in paragraph 272 and question why there has been a need to strengthen the guidance in this regard.

277. A “free” childcare offer should not have charges attached to it. Furthermore, there has been no assessment of the significant risk that additional charges (of up to £162.50 per calendar month) could prevent families on low incomes accessing the childcare offer on the grounds of affordability.

278. On this basis, we believe that the Welsh Government should:

- remove the right for providers to apply additional charges;
- consider, based on learning from the EILAs about the extent to which additional charges are being applied by providers, raising the proposed hourly rate of £4.50 if necessary for providers’ sustainability and to ensure they are reimbursed for the true cost of their provision.

Recommendation 26. That the Welsh Government remove the right for providers to apply additional charges.

Recommendation 27. That the Welsh Government assess, as a matter of priority, how many providers are applying additional charges within the existing Early Implementer Local Authorities (EILAs) and for what reason.

Recommendation 28. That the Welsh Government consider, based on learning from the EILAs about the extent to which additional charges are being applied by providers, raising the proposed hourly rate of £4.50 if necessary for providers’ sustainability and to ensure they are reimbursed for the true cost of their provision.

²⁶⁴ Welsh Government, Childcare Offer – Revised Guidance for Early Implementer Local Authorities, July 2018, p.17

8. 4. Cap on income

279. The Explanatory Memorandum states that a cap of £100,000 gross earnings per year, per parent will apply to the childcare offer in Wales.²⁶⁵ As such, couples with a joint income of £199,999 would be eligible to receive this offer if their children were of qualifying age.

280. Chwarae Teg agreed there should be an upper threshold for earnings but questioned whether the current amount targeted those most in need.²⁶⁶ It argued for further consideration to be given to a lower individual threshold or household income to “enable resources to be used to broaden the scheme to lower-income parents with younger children”.²⁶⁷ The Children’s Commissioner described the childcare offer as a “large subsidy for some of Wales’ highest earning families”.²⁶⁸

281. When challenged on the high level of the cap by the Equality, Local Government and Communities Committee, the Minister pointed to monitoring data from the childcare offer pilot showing “at least 60% of parents taking up the Offer earn less than the median average salary for Wales (£26,000), and no more than 5% earn more than £52,000”.²⁶⁹ The Minister acknowledged, however, that as awareness of the scheme increases and as it is rolled out to areas with higher average salaries, the proportion of parents on high salaries taking up the childcare offer could increase.²⁷⁰

282. When challenged on his statement that “81% of parents applying for the Offer find childcare difficult” – meaning nearly £20 million could be spent supporting the 19% of parents who did not – the Minister said that it was possible that many of the 19% were not necessarily affluent, but able previously to rely on friends or relatives.²⁷¹

283. The Minister confirmed that the cap had been set at £100,000 per parent for “speed and efficiency and necessity”, in order to engage HMRC, who are operating

²⁶⁵ Explanatory Memorandum, para 3.12, p.9

²⁶⁶ CYPE Committee, 24 May 2018, RoP [para 199]

²⁶⁷ Written evidence, CCF 11 – Chwarae Teg

²⁶⁸ Written evidence, CCF 02 – Children’s Commissioner for Wales

²⁶⁹ ELGC Committee, Letter from the Leader of the House and the Minister for Children, Older People and Social Care to the Chair of the ELGC Committee, 5 June 2018

²⁷⁰ CYPE Committee, 14 June 2018, RoP [para 212]

²⁷¹ CYPE Committee, 14 June 2018, RoP [para 206-208]

the same cap for the offer in England, and to achieve full roll out by 2020.²⁷² He also stated that the cap could be changed in future, if necessary.²⁷³

284. The Chief Secretary to the Treasury's letter of 14 March to the Welsh Government states that any changes to the eligibility criteria (which would include the income cap) would "generate further costs", "affect timelines for delivery" and "necessitate separate agreements to be covered by a new MoU" between the Welsh Government and HMRC.²⁷⁴

OUR VIEW ON THE INCOME CAP

285. We recognise that any savings made (or additional funding for a different cohort of families gained) from reducing the income cap would have to be offset against the administration costs of changing the eligibility criteria.

286. We also recognise that with the income cap for UK Tax Free Credits set at £100,000 per parent, lowering the cap for the childcare offer in Wales could require parents to navigate an even more complicated path to understand the support for which they may be eligible.

287. The need to consider this balance carefully has been thrown into sharp focus by our receipt, on 9 July 2018, of the Chief Secretary to the Treasury's letter of 14 March 2018. Its arrival after the completion of our evidence gathering has hindered our ability to test properly the feasibility of reducing the income cap and the impact this might have on the timing of the Welsh childcare offer's national roll-out.

288. Nevertheless, we are concerned that the childcare offer as currently framed does not target those most in need of support, nor those for whom childcare is the primary barrier to work. We believe that the Welsh Government should review the income cap using data emerging from the childcare offer pilot areas. However we remain concerned that the evidence will remain limited if the pilot remains largely contained within the less affluent areas of Wales.

²⁷² CYPE Committee, 24 May 2018, RoP [para 94]

²⁷³ CYPE Committee, 24 May 2018, RoP [para 94]

²⁷⁴ Correspondence from the Minister for Children, Older People and Social Care to Llywydd, 9 July 2018

Recommendation 29. That the Welsh Government outline, in advance of the Stage 1 debate, the discussions it has held with HMRC about the likely costs and timescales associated with any change to the income cap, and the basis on which the Minister has stated that such a change could be possible in future.

Recommendation 30. That the Welsh Government roll out the childcare pilot offer to a handful of the more affluent wards within existing EILAs, to test the extent to which the offer remains one that is taken up largely by those earning less than the median average salary.

Recommendation 31. That the Welsh Government, based on the findings of the forthcoming evaluation (and, if accepted, any data emerging as a consequence of recommendation 30), review the income cap of £100,000 per parent.

8. 5. Take up of the childcare offer pilot

289. In 2017-18, £10 million was allocated to test the first phase of the childcare offer pilot. In May 2018, BBC Wales reported that among the seven EILAs where the pilot had been rolled out, only £3.4 million of the £10 million available had been spent.

290. When asked about the low take up, the Minister emphasised the Offer is a “demand-led programme and we’re very early into it”.²⁷⁵ He said:

“I’m disappointed that we haven’t had the full update within that initial period, seven to eight months in. But [...] this is a demand-led programme. Secondly, because it’s very early, there’s the whole issue around communication. Local authorities were only delivering it in part of their areas, not the full area.”²⁷⁶

OUR VIEW ON THE TAKE UP OF THE PILOT OFFER

291. While we acknowledge that the childcare offer pilot remains in its relative infancy and, as such, lacks the public awareness and communication enjoyed by more established programmes, we are concerned that EILAs spent only a third of the money allocated for the first 7 months of the programme.

²⁷⁵ CYPE Committee, 14 June 2018, RoP [para 215]

²⁷⁶ CYPE Committee, 14 June 2018, RoP [para 215]

Recommendation 32. That the Welsh Government monitor closely the take up of the childcare offer pilot in EILAs and publish detail of the expenditure from March – August 2018 in advance of the Stage 1 debate in September.

8. 6. Exempted providers

292. To deliver childcare under the childcare offer pilot, providers must be registered with Care Inspectorate Wales (or Ofsted, if operating in England).²⁷⁷

Childminders and nannies

293. Under the original 2017 guidance for the childcare offer pilot, childminders were unable to care for child relatives under the childcare offer.²⁷⁸ This was based on the Child Minding and Day Care Exceptions (Wales) Order 2010,²⁷⁹ which states that a person does not act as a childminder if that person is a parent or relative of the child,²⁸⁰ or is a foster parent for the child.

294. The 2017 guidance also stated:

“Although there is a Voluntary Approval Scheme in place for Nannies, they are not regulated to the same extent as registered childcare providers and therefore cannot be funded to deliver the offer.”²⁸¹

295. PACEY Cymru (the Professional Association for Childcare and Early Years) expressed significant concerns about the exemption of childminders caring for relatives.²⁸² It stated that the exemption would affect the sustainability of the sector, pointing to the fact that around 35% of registered child minders care for a child to whom they are related.²⁸³ It also suggested that the exemption would have a disproportionate effect in rural areas, where provision and choice can be more limited, and for children with additional needs.²⁸⁴

²⁷⁷ Welsh Government, *Childcare Offer - Guidance for Early Implementer Local Authorities*, November 2017, p.13

²⁷⁸ Welsh Government, *Childcare Offer - Guidance for Early Implementer Local Authorities*, November 2017, p.13

²⁷⁹ *Child Minding and Day Care Exceptions (Wales) Order 2010*

²⁸⁰ A relative is defined in the Order as a grandparent, brother, sister, uncle or aunt (whether the full blood or the half blood) or by marriage or civil partnership or step parent.

²⁸¹ Welsh Government, *Childcare Offer - Guidance for Early Implementer Local Authorities*, November 2017, p.13

²⁸² Written evidence, CCF 04 – PACEY Cymru

²⁸³ CYPE Committee, 24 May 2018, RoP [para 43]

²⁸⁴ Written evidence, CCF 04 – PACEY Cymru

296. During the course of our Stage 1 scrutiny the Minister announced that, having learnt from experiences in the EILA pilots and following the concerns expressed about childminders being unable to receive funding for the care of a relative under the childcare offer, he had decided to change the policy. While arrangements for nannies will remain the same as before, he stated:

- from September 2018, registered childminders will receive funding for the care of a child who is also a relative;
- the guidance will set out that childminders must be registered with Care Inspectorate Wales to be able to access the Offer;
- the care cannot be provided in the child's home; and
- in the longer term, the Child Minding and Day Care Exceptions (Wales) Order 2010 will need to be amended, but because changes may be needed to other parts of the Order, his intention is to amend the Order in a "coherent way rather than on an ad hoc basis".²⁸⁵

Schools

297. Article 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010 also exempts schools from registering with Care Inspectorate Wales to provide childcare. This means schools can only provide the early years education element of the childcare offer. To provide the childcare element of the offer schools can work in partnership with a registered childcare provider or create a separate legal entity for representatives of the school to register with the Inspectorate.

298. When Estyn was asked whether they thought this exemption was a problem, its representatives pointed to good examples of collaboration and co-location leading to good quality care, and stated that they would welcome more arrangements of that kind.²⁸⁶ Care Inspectorate Wales said:

"...there's nothing to stop a registered service with CIW being provided from a school premises. There's nothing to stop school governors putting forward somebody to be a registered provider. But they need to register with us to provide childcare and play, and that's for good reason."²⁸⁷

²⁸⁵ Welsh Government, [Written Statement - Continued expansion of Government Funded Childcare Offer from September 2018](#), 19 June 2018

²⁸⁶ CYPE Committee, 6 June 2018, RoP [para 151]

²⁸⁷ CYPE Committee, 6 June 2018, RoP [para 321]

299. WLGA representatives said “because headteachers have got a lot on their plates anyway, [they] find it much easier to actually contract a provider to come in, deliver that on the school site”.²⁸⁸ They also emphasised the importance of differentiating between early years education and childcare, explaining:

“Children do need at age 3 not to be in a concentrated setting from 8 a.m. until 6 p.m., with teachers teaching constantly for that time. That would be very exhausting for a child who’s doing that five days a week. So, it needs to have a different influence. That’s not to say it couldn’t be delivered by a school.”²⁸⁹

300. When questioned on the exemption of schools, the Minister referred to the current review of the 2010 Order and said “it’s something I’m more than happy to consider as part of the review of this [...] to look at that Order that puts that hurdle in place and see whether we need to remove that”.²⁹⁰ The Minister’s official added:

“It’s an Order that has a number of issues, which probably the time is right to review [...] the childminding one is one of them, this is another, and there are some others.”²⁹¹

OUR VIEW ON EXEMPTED PROVIDERS

301. We welcome the Minister’s decision during the course of our scrutiny of this Bill to allow childminders who are caring for relatives to receive funding under the childcare offer.

302. Our preferred approach is for the full 30 hours of childcare and early years education to be provided in one location, be that either a maintained or non-maintained setting. This is on the basis of the concerns we have set out in relation to the dual stream provision facilitated by this Bill.

303. The exemption of schools as providers of childcare, unless they form a partnership with a registered provider or create a separate legal entity that is able to register with Care Inspectorate Wales, is an obvious barrier to children receiving the full 30 hours provision on one site.

²⁸⁸ CYPE Committee, 6 June 2018, RoP [para 467]

²⁸⁹ CYPE Committee, 6 June 2018, RoP [para 466]

²⁹⁰ CYPE Committee, 14 June 2018, RoP [para 117]

²⁹¹ CYPE Committee, 14 June 2018, RoP [para 121]

304. We know that a large proportion of schools across Wales already provide at least 10 of the 30 hours provided by the childcare offer, in the form of early years education. This early years education is inspected by Estyn. As such, we question why schools are excluded from being able to offer directly the full 30 hours provided under the childcare offer without having to go through additional burdensome processes. We also query the level of time and administrative burden associated with both registering as a separate legal entity and being inspected by Care Inspectorate Wales.

305. If schools are enabled to provide directly the full childcare offer, it is important that this does not reduce the capacity needed from the non-maintained sector to be able to sustain the offer over 48 weeks of the year for all eligible families. We are clear that a mixed-economy is vital to provide flexibility and choice for parents within the childcare offer, and to make the most of the range of settings available in Wales. As such, alongside work to enable schools to offer the full 30 hours of provision, we urge the Welsh Government to ensure that the non-maintained sector is encouraged and supported to offer early years education.

306. We welcome the Minister's willingness to look again at arrangements for schools, and urge him to undertake this work as soon as possible.

Recommendation 33. That the Welsh Government, as a matter of urgency, reconsider the ability of schools to deliver the full childcare offer directly.

Recommendation 34. That the Welsh Government make public the findings of its review of the Child Minding and Day Care Exceptions (Wales) Order 2010 before the start of Stage 3, to inform Members' tabling and consideration of amendments.

8. 7. Capital funding

307. The Welsh Government's Education Budget includes £60 million capital funding allocated for the childcare offer over three years from 2018-19.

308. During our scrutiny of the Draft Budget 2017-18, the Cabinet Secretary for Education stated:

“...if we're designing facilities for the future, we need to take the Childcare Offer into consideration when designing buildings for the future. We know that one of the simplest ways in which we can make the childcare offer accessible to parents is if that can be delivered in one setting, rather than children having to move to different settings.

So, we've got an allocation in our capital so that we start approving bids now for buildings that will be capable of meeting, yes, children's educational needs, but also the childcare offer."²⁹²

309. In oral evidence, the Minister confirmed this capital funding was available as grants to the non-maintained sector as well as support for the maintained sector.²⁹³ He provided an explanation of the £60 million allocation within the Cabinet Secretary for Education's budget:

"The £60 million is going to be used for delivery of the offer in its entirety, but it includes within that things such as alignment of the educational and the childcare aspects, the co-location of services. We've discussed the scope of this programme and the use of this money with umbrella organisations within the childcare sector, with local authorities and other stakeholders, with the stakeholder reference group, but we are clear that the funding needs to be used in a way that's flexible enough to allow for things like new infrastructure—so, where that's needed, brand-new provision—but also the expansion and modification of existing provision as well."²⁹⁴

OUR VIEW ON CAPITAL FUNDING

310. We welcome the Minister's reassurances that, in the context of the mixed economy of childcare providers, a balance will be struck between capital support for both the maintained and non-maintained sectors. We believe that this is essential for:

- the sustainability of the non-maintained sector, particularly if our recommendation to enable schools to deliver directly the full 30 hour childcare offer is agreed; and
- the delivery of a sufficiently accessible and flexible childcare offer.

Recommendation 35. That the Welsh Government ensure an appropriate balance is struck between capital support for both the maintained and non-maintained sectors.

²⁹² CYPE Committee, 10 November 2016, RoP [para 46]

²⁹³ CYPE Committee, 14 June 2018, RoP [para 198]

²⁹⁴ CYPE Committee, 14 June 2018, RoP [para 196]

8. 8. Sector and workforce capacity

311. Several stakeholders raised concerns about the potential challenges for the childcare offer that could be created by a lack of childcare workers and adequate provision.

312. Childcare providers' written evidence pointed to a lack of Care Inspectorate Wales-registered childcare in many areas, particularly during school holidays.²⁹⁵ The Wales Pre-school Providers' Association also emphasised the importance of ensuring CIW had capacity to register the providers that would be necessary to deliver the childcare offer once fully rolled out.²⁹⁶

313. The Children's Commissioner referred to concerns amongst the current childcare workforce in Wales, raised in her Annual Report 2016-17, in relation to capacity and sustainability, including Welsh language provision. She said:

“Analysis of the pilot phase will need to consider Welsh language provision and provision for children with additional needs, and work with providers in the sector to ensure that there is sufficient capacity to deliver the offer in the terms outlined.”²⁹⁷

Welsh language provision

314. Several stakeholders, including Estyn,²⁹⁸ the Children's and Welsh Language Commissioners,²⁹⁹ childcare providers,³⁰⁰ and Social Care Wales,³⁰¹ raised concerns about the lack of Welsh language childcare provision.

315. Estyn stated:

“There is a shortage of childcare settings operating through the medium of Welsh. Parents may therefore choose to access the childcare element in an English-medium setting. They may also choose to access education in an English-medium setting to avoid the need for

²⁹⁵ See written evidence, CCF 03 – Mudiad Meithrin, CCF 05 – Clybiau Plant Cymru Kids' Clubs, and CCF 06 – Cwlwm, CCF 08 – Wales Pre-school Providers' Association (WPPA)

²⁹⁶ Written evidence, CCF 08 – Wales Pre-school Providers' Association (WPPA)

²⁹⁷ Written evidence, CCF 02 – Children's Commissioner for Wales

²⁹⁸ Written evidence, CCF 07 – Estyn

²⁹⁹ See written evidence, CCF 02 – Children's Commissioner for Wales and CYPE Committee, **Letter and briefing note from the Welsh Language Commissioner regarding Welsh medium childcare and early years education provision**, published 6 December 2017

³⁰⁰ CYPE Committee, 24 May 2018, RoP [para 176]

³⁰¹ CYPE Committee, 6 June 2018, RoP [para 240]

children to travel between sites. Estyn is concerned that this could affect the number of children taking up a place at a Welsh-medium school or setting that provides funded education. Parents may decide not to transfer to Welsh medium education at a later date.”³⁰²

316. The Welsh Language Commissioner stated:

- the childcare offer is a “golden opportunity” to ensure an increase in the numbers who receive Welsh medium childcare, which could be critical in achieving the Welsh Government’s vision of a million Welsh speakers by 2050;
- despite its importance, there are no explicit plans on how the 30 hours childcare offer and the 2050 vision will be integrated, and it is unclear how the Welsh Government intends to move from general commitments to increase Welsh medium childcare provision to specific actions which will have an impact on the ground;
- Welsh in Education Strategic Plans (WESPs) have significant potential to turn broad and general commitments into specific and material actions and targets and should be used as a framework for coordinating the actions of Welsh Government, local authorities and childcare providers;
- current data on Welsh medium childcare in Wales is fragmented, inconsistent and difficult to interpret. In order to produce effective national and local strategies, and to evaluate their impact, valid and reliable data on childcare is essential.³⁰³

317. Cymdeithas yr Iaith Gymraeg (the Welsh Language Society) called for the Bill to establish a right for parents to receive Welsh-medium childcare across Wales.³⁰⁴

318. The Minister acknowledged that there are areas in which there is a “significant undersupply” of Welsh language childcare. He responded to concerns by stating:

“...there’s more than one way to skin this particular cat, and it doesn’t require a new duty. Within the Childcare Act 2006, we’ve already got the requirement on local authorities to make sure that the childcare

³⁰² Written evidence, CCF 07 – Estyn

³⁰³ Welsh Language Commissioner, **Briefing Note: Welsh medium childcare and early years education provision**, 22 November 2017

³⁰⁴ Written evidence, CCF 19 – Cymdeithas yr Iaith Gymraeg

provision is flexible, sustainable and responsive to local needs. On top of that, we've got the childcare sufficiency assessments, which include, within that, the demand for and the supply of Welsh-medium childcare provision. But on top of that, what we are doing is we are putting £2 million into Mudiad Meithrin, for example, for work over two years to establish new Welsh-medium childcare settings where there's a lack of provision."³⁰⁵

319. The Minister confirmed that by April 2018, 40% of children taking part in the offer were using childcare delivered through the medium of Welsh or bilingually.³⁰⁶ When asked about how data on Welsh language provision is collected, officials explained that the setting's language status is self-defined by providers against four categories listed in the Childcare Act 2006 – Welsh-medium, Bilingual, English-medium with some bilingual elements, and English-medium.³⁰⁷ The Minister's officials confirmed that, at this stage, the evaluation data on the childcare offer pilots did not breakdown this 40% figure into those four categories.³⁰⁸

Provision for those with additional learning needs

320. The Children's Commissioner for Wales,³⁰⁹ the National Deaf Children's Society Cymru,³¹⁰ Clybiau Plant Cymru Kids' Clubs,³¹¹ and the Wales Pre-school Providers' Association³¹² highlighted the need to ensure sufficient provision for those with additional learning needs (ALN) as part of the childcare offer.

321. Clybiau Plant Cymru Kids' Clubs raised concerns that insufficient specialist provision for children with additional needs may limit parents' ability to access the childcare they require.³¹³

322. The National Deaf Children's Society Cymru emphasised the importance of ensuring childcare provision is able to meet and cater for a child's ALN requirements, and welcomed the fact that parents accessing the pilot offer within

³⁰⁵ CYPE Committee, 14 June 2018, RoP [para 44]

³⁰⁶ CYPE Committee, 14 June 2018, RoP [para 50]

³⁰⁷ CYPE Committee, 14 June 2018, RoP [paras 60 and 64]

³⁰⁸ CYPE Committee, 14 June 2018, RoP [para 58]

³⁰⁹ Written evidence, CCF 02 – Children's Commissioner for Wales

³¹⁰ Written evidence, CCF 01 – National Deaf Children's Society Cymru

³¹¹ Written evidence, CCF 05 – Clybiau Plant Cymru Kids' Clubs

³¹² Written evidence, CCF 08 – Wales Pre-school Providers' Association

³¹³ Written evidence, CCF 05 – Clybiau Plant Cymru Kids' Clubs

EILAs are invited to provide details of any ALN.³¹⁴ It also called on the Welsh Government to consider the skillset of the existing childcare workforce in relation to ALN and to ensure that an application for the childcare offer that discloses a child has ALN is referred to the local authority's Early Years ALN Coordinator.³¹⁵

323. Responding to concerns about provision for children with ALN, the Minister said he was confident the childcare offer could deliver for children with ALN. He explained:

- under the Additional Learning Needs and Education Tribunal (Wales) Act 2018, local authorities are subject to a duty to support those with ALN within early years, and have an ALN lead officer for early years specifically;
- guidance would be available and would be accompanied by funds to support ALN provision specifically;
- the new childcare qualifications will include specialist pathways within ALN.³¹⁶

Workforce capacity

324. Social Care Wales (SCW), the body responsible for supporting the training and development of the social care workforce (including the early years and childcare workforce), raised a number of significant concerns about the workforce's capacity to deliver the childcare offer once fully rolled out. It stated:

- there is under capacity in the Welsh childcare system;
- there are not enough places for all eligible children to attend childcare full time;
- 21,000 additional full time equivalent places would be needed to meet demand if the anticipated number of parents of eligible children were to take up the offer;
- 2,637 extra workers would be needed across Wales for full roll out by 2020, based on the National Minimum Standards for Regulated Childcare for Children up to the age of 12 year;

³¹⁴ Written evidence, CCF 01 – National Deaf Children's Society Cymru

³¹⁵ Written evidence, CCF 01 – National Deaf Children's Society Cymru

³¹⁶ CYPE Committee, 14 June 2018, RoP [para 70]

- there is not a surplus of qualified staff waiting to join the sector;
- to meet the potential shortfall, a 700% increase would be needed in the number of childcare apprenticeships being recruited and completed over the next two years, but there is no indication that learning providers have the capacity to deliver this level of increase;
- based on the cost of a Level 3 apprenticeship in Wales, approximately £11.3m would need to be added to future workforce and education plans; and
- alternatively, colleges could offer an additional 1,100 places (a 38% increase per year) between intakes of 2018-2020 and 2019-2021, but additional qualified staff would not be available until summer 2021. There is no evidence that colleges have the additional capacity to meet this demand.³¹⁷

325. Responding to the concerns about workforce capacity, the Minister said he was confident there will be sufficient childcare workforce in place to deliver the full offer by 2020.³¹⁸ He said:

“We’re not waiting for the pilots to get on with that, because we’ve already identified, based on our modelling, what the potential full take-up of this could be, and where, also, those gaps in workforce provision would be as well across the piece.”³¹⁹

326. The Minister did, however, acknowledge that work needed to be accelerated, that the task would be challenging, and that:

“...the ambition of this for a full roll-out by 2020 is taxing us. We know the scale of this, but we’re putting the things in place now in order to deliver it, and working with the agencies out there to do it.”³²⁰

OUR VIEW ON SECTOR AND WORKFORCE CAPACITY

327. We have significant concerns about the capacity of the sector and its workforce to meet the potential demand arising from the national roll-out of the childcare offer. Evidence presented by Social Care Wales outlining the challenge

³¹⁷ Written evidence, CCF 14 – Social Care Wales

³¹⁸ CYPE Committee, 16 June 2018, RoP [paras 252-253]

³¹⁹ CYPE Committee, 16 June 2018, RoP [para 241]

³²⁰ CYPE Committee, 16 June 2018, RoP [para 253]

that lies ahead was stark. We do not feel reassured that sufficient plans are in place to address the scale of the current gap and maintain the quality of care required. We are concerned that, to deliver the high quality care required, more needs to be done to improve the rewards structure for the sector and ensure sufficient time is available to achieve the necessary levels of qualification.

328. We are also concerned to hear the sector's concerns about its ability to cope with the sudden peaks in demand that will occur during school holidays when the early years education element of the childcare offer will not be available.

329. We are further concerned that what has been described by the Welsh Language Commissioner as a "golden opportunity" to align the aims of the childcare offer with those of the Cymraeg 2050 strategy is being missed. We urge the Welsh Government to take heed of the Welsh Language Commissioner's and others' concerns that insufficient provision is in place, not only in terms of Welsh-medium provision but in terms of normalising Welsh language skills across the sector. Without improvements to data, we cannot be sure how many children are accessing childcare in the Welsh language and planning is taking place on the basis of best guesses. This is not good enough if we are to meet the target of one million Welsh speakers by 2050.

330. We are aware that Schedule 2 of the Welsh in Education Strategic Plan and Assessing Demand for Welsh Medium Education (Wales) Regulations 2013 requires WESPs include "a statement setting out the methods to be adopted by the local authority for assessing demand for Welsh medium childcare and Welsh medium education in its area". However, it is not clear that such statements have delivered concrete actions to date.

Recommendation 36. That the Welsh Government respond in detail to Social Care Wales's calculations of the workforce deficit as detailed in paragraph 324 of this report. This response should be provided before the Stage 1 debate, to inform Members' consideration of the extent to which the Bill's stated purpose of encouraging more people back to work will be affected if the sector does not have the capacity to deliver childcare to all eligible families.

Recommendation 37. That the Welsh Government, in accordance with the Welsh Language Commissioner's recommendations, work to integrate the childcare offer with the Cymraeg 2050 strategy, use Welsh in Education Strategic Plans (WESPs) to specify targets in relation to Welsh language childcare provision, and reform the way childcare data is collected and shared to ensure that all planning is based on reliable information.

Annex A – List of written evidence

The following people and organisations provided written evidence to the Committee. All consultation responses and additional written information can be viewed on the Committee’s website.

Organisation	Reference
National Deaf Children’s Society Cymru	CCF 01
Children’s Commissioner for Wales	CCF 02
Mudiad Meithrin	CCF 03
Professional Association for Childcare and Early Years (PACEY) Cymru	CCF 04
Clybiau Plant Cymru Kids’ Clubs	CCF 05
Cwlwm	CCF 06
Estyn	CCF 07
Wales Pre-school Providers Association	CCF 08
Her Majesty’s Revenue and Customs (HMRC)	CCF 09
UNISON	CCF 10
Chwarae Teg	CCF 11
National Day Nurseries Association (NDNA) Cymru	CCF 12
Carmarthenshire County Council	CCF 13
Social Care Wales	CCF 14
Hywel Dda University Health Board	CCF 15
Care Inspectorate Wales	CCF 16
Save the Children	CCF 17
NASUWT	CCF 18
Cymdeithas yr Iaith Gymraeg	CCF 19
Oxfam Cymru	CCF 20
Welsh Local Government Association (WLGA) & Association of Directors of Education in Wales (ADEW)	CCF 21

Additional Information Received

Organisation	Reference
Letter from the Minister for Children, Older People and Social Care	FI CCF 01
Welsh Government	FI CCF 02
Cwlwm	FI CCF 03
Estyn	FI CCF 04
WLGA	FI CCF 05
Care Inspectorate Wales	FI CCF 06
Letter from the Minister for Children, Older People and Social Care	FI CCF 07
HMRC	FI CCF 08

Annex B – List of oral evidence sessions

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed on the Committee's website.

Date	Name and organisation
16 May 2018	<p>Huw Irranca-Davies AM, Minister for Children, Older People and Social Care</p> <p>Owain Lloyd, Deputy Director, Childcare, Play and Early Years Division, Welsh Government</p> <p>Tracy Hull, Lawyer, Social Care Team, Welsh Government</p> <p>Professor Sally Holland, Children's Commissioner for Wales</p> <p>Rachel Thomas, Head of Policy and Public Affairs, Office of the Children's Commissioner for Wales</p>
24 May 2018	<p>Sandra Welsby, National Manager, National Day Nurseries Association Cymru and representing Cwlwm</p> <p>Jane O'Toole, Chief Executive, Clybiau Plant Cymru Kids' Clubs and representing Cwlwm</p> <p>Claire Protheroe, Direct Services Manager, Professional Association for Childcare and Early Years Cymru and representing Cwlwm</p> <p>Angharad Starr, Project Manager, Mudiad Meithrin and representing Cwlwm</p> <p>Jane Alexander, Chief Executive Officer, Wales Pre-school Providers Association and representing Cwlwm</p> <p>Cerys Furlong, Chief Executive, Chwarae Teg</p> <p>Phil Mattacks, Tax-free Childcare Design, Engagement and Rollout Team, Her Majesty's Revenue and Customs (HMRC)</p>

Date	Name and organisation
6 June 2018	<p>Claire Morgan, Strategic Director, Estyn</p> <p>Mererid Wyn Williams, Assistant Director, Estyn</p> <p>Jane Rees, Her Majesty's Inspector, Estyn</p> <p>Gemma Halliday, Workforce Development Manager, Social Care Wales</p> <p>Kevin Barker, Head of Childcare and Play Inspection, Care Inspectorate Wales</p> <p>Gill Huws-John, Senior Manager, Childcare and Play Inspection, Care Inspectorate Wales</p> <p>Esther Thomas, Director of Education and Lifelong Learning, Rhondda Cynon Taf County Borough Council and representing the Association of Directors of Education in Wales</p> <p>Catrin Edwards, Head of Service Transformation, Rhondda Cynon Taf County Borough Council, and representing the Association of Directors of Education in Wales</p> <p>Catherine Davies, Lifelong Learning Policy Officer (Children), Welsh Local Government Association</p> <p>Sarah Mutch, Education Lead for Early Years and Partnerships, Caerphilly County Borough Council, and representing the Welsh Local Government Association</p>
14 June	<p>Huw Irranca-Davies AM, Minister for Children, Older People and Social Care</p> <p>Owain Lloyd, Deputy Director, Childcare, Play and Early Years Division, Welsh Government</p> <p>Nicola Edwards, Head of Childcare Offer Development, Welsh Government</p>

Annex C – Hours of early years education

Local Authority	Number of early years education hours paid per week ³²¹
Blaenau Gwent	12.5
Bridgend	N1 ³²² : 10 (non-maintained); 10-15 (maintained) N2 ³²³ : 10 (non-maintained); 30 (maintained)
Caerphilly	10
Cardiff	7.5 hours (3 x 2.5 hours) to 12.5 hours (5 x 2.5 hours)
Carmarthenshire	10
Ceredigion	10
Conwy	10
Denbighshire	10
Flintshire	10
Gwynedd	10
Isle of Anglesey	10
Merthyr Tydfil	12.5
Monmouthshire	10
Neath Port Talbot	12.5
Newport	10 – 12.5
Pembrokeshire	10
Powys	12.5
Rhondda Cynon Taff	15
Swansea	10 (maintained)
Torfaen	10 (non-maintained); 12.5 (maintained)
Vale of Glamorgan	12.5
Wrexham	N1: 10; N2: 12.5

³²¹ As submitted at 25 June 2018 – Written information, FI CCF 05 - WLGA

³²² N1 refers to the “rising 3s”, a term used to describe the cohort entering early years education a term after their third birthday

³²³ N2 refers to the school year children turn 4 – the full year before entering Reception class