

Summary of changes made at Stage 2 of the Childcare Funding (Wales) Bill

Bill Summary

October 2018



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Childcare Funding (Wales)

Bill

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Paper Overview:

This paper provides a summary of changes agreed at Stage 2 of the Welsh Government's Childcare Funding (Wales) Bill.



Contents

Introduction	1
Stage 1 Scrutiny	2
Amendments at Stage 2	3
Welsh Government amendments.....	3
Opposition parties' amendments.....	4
Withdrawn and unmoved amendments	7
Next steps.....	8

Introduction

On 16 April 2018, Huw Irranca-Davies, Minister for Children, Older People and Social Care (“the Minister”), introduced the ***Childcare Funding (Wales) Bill*** (the Bill) and Explanatory Memorandum. The Minister then made an **oral statement in plenary** on 17 April 2018, explaining that:

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.

A ‘Statement of Policy Intent for Subordinate Legislation to be made under this Bill’ was also released on 17 April 2018. This statement says it:

[...] provides an indication of the current policy intention for the subordinate legislation that the Welsh Ministers would be empowered or required to make under the provisions of the Childcare Funding (Wales) Bill.

The Research Service published a **Bill Summary of the Childcare Funding (Wales) Bill** in May 2018. That summary provides an overview of the provisions of the Bill, and highlights key aspects and documents related to the Bill. It also includes some policy background to **the childcare offer**, the implementation of which the Bill is designed to support.

Stage 1 Scrutiny

The Children, Young People and Education (CYPE) Committee began its Stage 1 scrutiny in April 2018, receiving **written evidence from stakeholders**, with the Minister for Children and Social Care providing evidence on **16 May** and **14 June**. Stakeholders provided oral evidence to the Committee on **24 May** and **6 June**.

As a result of the evidence it received, the Committee made 37 recommendations to the Welsh Government in relation to the Bill. These recommendations, and the rationale behind them, are set out in the Committee's **Stage 1 report on the General Principles of the Bill**, published on 18 July 2018. The Research Service summarised that report, in an **article published on 14 September 2018**. The Welsh Government **responded to the report** on 17 September. And submitted further information in a **letter on 17 October 2018**.

All but one of the CYPE Committee members at the time agreed with the general principles of the Bill. Llyr Gruffydd AM, Plaid Cymru, objected to the Bill due to his concerns regarding the targeting of the free childcare provision at working parents only and the lack of a full evaluation of the ongoing childcare offer.

All Assembly Members debated the general principles of the Bill in **Plenary on 18 September**. The principles of the Bill were agreed, with 41 in favour and 11 against.

Prior to the CYPE's Committee report on the General Principles of the Bill, the Assembly's Finance Committee published its report on the financial implications of the Bill **on 16 July 2018**. The Constitutional and Legislative Affairs Committee reported on the appropriateness of the provisions in the Bill that grant powers to make subordinate legislation **on 28 June 2018**.

Amendments at Stage 2

Stage 2 started on 19 September 2018 and ended on 18 October 2018. The CYPE Committee met to consider and dispose of the Stage 2 amendments **on 18 October 2018**.

In total there were 47 amendments put forward at Stage 2 and one amendment to an amendment. Of these 10 were tabled by the Welsh Government. In summary:

- All 10 Welsh Government amendments were agreed;
- 35 opposition amendments were not agreed;
- One opposition amendment was withdrawn; and
- One opposition amendment was not moved.

The Bill as amended at Stage 2 has been **published on the Assembly's website**.

Welsh Government amendments

The Welsh Government tabled two amendments at the outset of Stage 2, on 19 September. These focused on changing the wording in subsections (2) and (3) of Section 4 of Bill. These subsections deal with the provision of information by third parties. Under the Bill as introduced, these sections would have allowed the Welsh Government to require a UK Government department or Minister of the Crown to provide it with information.

These initial amendments changed this so that the Welsh Government can only permit, not require, these bodies to provide it with information. The Bill as amended will still allow the Welsh Government to require and permit local authorities to provide it with information. This is different from the position with HMRC where Welsh Ministers can only permit them to provide certain information.

The Welsh Government introduced eight further amendments on 4 October 2018. This set of amendments relate to the eligibility criteria for the childcare offer. While they do not set out the specific criteria on the face of the Bill, as requested by the CYPE Committee, the amendments aim to provide further clarity on who is a qualifying child. As a result of these amendments, the Bill now sets out that the offer will be available to a child 'under compulsory school age' and 'who is in Wales' and is 'of an age (or within an age range) specified in regulations'.

In Stage 2 proceedings on 18 October, the Minister stated that by including ‘under compulsory school age’, the Welsh Government, could in future extend the offer to children younger than 3 and 4 year olds without it needing ‘to find a legislative slot to do it on the main floor of the Senedd’ as it will be able to modify the eligibility of the offer through future regulations.

Opposition parties’ amendments

No opposition party amendments were agreed during the CYPE Committee’s Stage 2 scrutiny. However the Minister committed to discussing some further issues with Members during Stage 3. Below is a summary of some of the key policy points that were debated in **Committee on 18 October**.

Many of the amendments tabled by opposition parties reflected the issues highlighted by the CYPE Committee in its Stage 1 scrutiny. These amendments were grouped into 13 different categories.

The CYPE Committee’s report set out its concerns about the proposed right of childcare providers to apply a daily charge of up to £7.50, which it felt would be a barrier to access for the most disadvantaged families. It recommended that the Welsh Government should remove the right for providers to apply the additional charges. It also recommended the Welsh Government should, if necessary, raise the hourly rate of £4.50 per hour per child, to cover the true costs of provision and support the sustainability of providers.

Janet Finch-Saunders AM, Welsh Conservatives, tabled an amendment that no charge be made to a parent of a qualifying child who would be eligible for free school meals if they were of compulsory school age. While Llyr Gruffydd AM, Plaid Cymru, sought to amend the Bill to ensure that parents could access the childcare offer ‘free of any charge’.

These amendments were not agreed. The Minister reported that the inclusion of costs for food and other additions into the hourly rate ‘could make the scheme unaffordable in the current financial climate’. He also noted that different providers offer different services, with some not offering food or transport, so a blanket increase in the amount paid to childcare offer providers would not be appropriate. However, responding to the Committee’s concerns, the Minister said:

We’ve published guidance to local authorities, strengthened guidance, on what the upper charging limit should be [...] So, this helps ensure that any charges being made are within a reasonable range, if they are made at all [...] We will also publish revised guidance to strengthen our position on additional charges ahead of the full national roll-out [...] parents must have the option—they must have the option—of providing a packed meal rather than paying for a meal provided by a provider. Providers cannot say, ‘You must pay additionally to eat at our establishment.’

[...] Parents must also, within our existing guidance, be able to opt their child out of paid-for off-site activities. You cannot force that child and their family and say, ‘Because you’re coming to our facility, you must then pay additional to go off on this activity or participate in such activities.’

In terms of removing charges for those who would be eligible for free school meals, the Minister said it:

[...] would be quite difficult to administer and potentially burdensome as well, by the way, on local authorities and on providers and parents. So, I would resist that amendment, but I understand the spirit of it.

The Minister also committed to ‘explore further’ how the Welsh Government could make ‘information about the [hourly rate paid to providers] more public, more transparent and maybe with a view to bringing forward something in Stage 3’.

Several amendments were tabled in regards to defining, and in some cases, expanding the pool of eligible parents. The limits to eligibility for the offer, i.e. only for working parents of children aged 3 and 4, was another key concern for the CYPE Committee during Stage 1 scrutiny. It recommended the Bill be amended to extend its provisions to include parents who are seeking work by undertaking education and training linked to securing employment, to be defined in regulations. Llyr Gruffydd subsequently tabled an amendment, supported by Janet Finch-Saunders, that sought to extend eligibility to those undertaking education or training for the purposes of securing employment.

In opposing that amendment, the Minister argued that the Welsh Government has a number of ‘other childcare support programmes’, which he outlined in his evidence, to support those in education or training. However, he reiterated his commitment to:

[...] commission a piece of internal work to examine how we can do away with some of the confusion about what support is available for different categories of parent.

Given the concerns raised during Stage 1 scrutiny and the recommendations of the CYPE Committee report, some amendments sought to influence the delivery of the underlying childcare offer through the Bill. Janet Finch-Saunders tabled amendments that sought to:

- Minimise the impact of transporting children between different providers; and
- Clarify through regulations who can deliver the offer, with a particular emphasis on schools and relatives of qualifying children.

In response to the concerns over the transport of children, the Minister stated the Welsh Government has:

[...] strengthened the guidance to local authorities only in recent weeks over the drive towards co-location, wherever that is possible, and we've also used the £60 million capital funding that we announced within the last few weeks—month—with specific guidelines around that that should be used primarily to drive co-location to avoid the problems of lifting children up, transporting them somewhere else and dropping them down into a childcare setting out of a foundation phase, because we recognise that trying to actually co-locate foundation phase and childcare for most people will be the right solution.

He also highlighted his view that diversity within the sector was needed to ensure greater flexibility. The Minister discussed that school based provision, which would mostly be tied to school working hours, would not always be able 'to meet very diverse family circumstances and working patterns'.

In terms of allowing schools and close relatives of qualifying children to access the offer, the Minister reported that:

[...] we've already tweaked the [Administrative] scheme so that we do, indeed, allow grandparents who are registered child minders to avail themselves of the childcare offer, to provide childcare under this offer, whether or not they provide care for their own grandchildren. So, unlike other offers—at this moment in time, but we'll evaluate it—we haven't stipulated, 'Well, you can provide for your own grandchildren, but you must have two or three or four other children as well.

[...] schools can provide the offer, as long as they're registered with CIW as a childcare provider. And, in fact, some are doing this.

The Chair of the CYPE Committee has stated her intention to write to the Minister on behalf of the Committee to clarify the position of schools being able to deliver the offer. The Committee had heard during Stage 1 that schools were unable to register with the Care Inspectorate Wales in their own right to deliver childcare due to the provisions of the ***Child Minding and Day Care Exceptions (Wales) Order 2010***.

Other amendments sought to ensure that the provisions of the Bill would be time limited or subject to ongoing review. The Minister rejected these stating:

[...] we set out clearly, within the regulatory impact assessment for the Bill, our intention to review the extent to which the legislation will have achieved its objectives a few years down the line, and of course we're going to be doing that regardless [...] that's why I've already made plans and have written to the committee to say I have plans to bring forward an amendment during Stage 3.

Withdrawn and unmoved amendments

Two amendments were withdrawn during Stage 2 proceedings. Amendment 5, tabled by Llyr Gruffydd, related to ensuring the adequate provision of Welsh medium childcare. The Minister said:

[...] we don't believe this amendment quite hits the mark in its current form, but it is an area where I would like to work with Llyr and the committee, and also with the Minister for Welsh Language and Lifelong Learning, to see if we can find a constructive way forward and get this right [...] so it could be that we bring back a different amendment during Stage 3, or it could be that, after discussion, we find a different way to take forward things.

In light of this, Llyr Gruffydd agreed to withdraw his amendment.

Suzy Davies, Welsh Conservatives, agreed to not move amendment 45, which sought to limit potential ambiguity in the Bill by changing the word 'may' for 'must' in Section 11 of the Bill. The Minister argued that the change would not 'achieve a change in legal effect' and was not 'necessary'.

Next steps

Stage 3 of the Childcare Funding (Wales) Bill commenced on 19 October 2018. During this stage, Assembly Members (including the Minister) will be able to submit amendments to the Bill as amended at Stage 2.

The whole of the Assembly will dispose of the amendments tabled at Stage 3 in Plenary, date yet to be confirmed. Following Stage 3, it is anticipated that the Assembly will be asked to vote on whether to pass the Bill at Stage 4. No date has yet been set for Stage 4.

More information on the National Assembly's Legislative Process can **be found on its website**. For further information on the Bill, please contact the lead responsible clerk Llinos Madeley (**SeneddCYPE@assembly.wales**).