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WELSH STATUTORY INSTRUMENTS

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**2016 No. 88 (W. 42)**

**CHILDREN AND YOUNG PERSONS, WALES**

The Childcare Act 2006 (Local Authority  
Assessment) (Wales) Regulations 2016

<i>Made</i>	- - - -	<i>27 January 2016</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>29 January 2016</i>
<i>Coming into force</i>	- -	<i>1 April 2016</i>

The Welsh Ministers, in exercise of the powers conferred on the National Assembly for Wales by sections 26(1)(a) and (2) of the Childcare Act 2006 (1) and now vested in them(2) make the following Regulations.

**Title, commencement and application**

1.—(1) The title of these Regulations is the Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2016.

(2) These Regulations come into force on 1 April 2016.

(3) These Regulations apply in relation to Wales.

**Interpretation**

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Childcare Act 2006;

“the Measure” (“*y Mesur*”) means the Children and Families (Wales) Measure 2010(3);

“assessment” (“*asesiad*”) means the assessment carried out by a local authority in accordance with these Regulations;

“child minding” (“*gwarchod plant*”). has the meaning in Part 2 of the Measure;

“childcare” (“*gofal plant*”) has the meaning in section 30 of the Act;

“childcare provider” (“*darparwr gofal plant*”) means any person who is registered under Part 2 of the Measure to provide childcare;

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(1) 2006 c. 21.

(2) The functions of the National Assembly for Wales under section 26 of the Childcare Act 2006 transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(3) 2010 nawm 1.

“day care” (“*gofal dydd*”) has the meaning in Part 2 of the Measure;

“foundation phase” (“*cyfnod sylfaen*”) has the meaning in the Education (National Curriculum) (Foundation Phase) (Wales) Order 2014<sup>(4)</sup>;

“home childcare providers” (“*darparwyr gofal plant yn y cartref*”) means persons approved under a scheme made by the Welsh Ministers pursuant to section 12 of the Tax Credits Act 2002<sup>(5)</sup>;

“play monitoring group” (“*grŵp monitro chwarae*”) means a group established by a local authority for the purpose of securing sufficient play opportunities for children in its area, the members of which consist of the local authority and such other persons as the local authority considers appropriate;

“relevant premises” (“*mangre berthnasol*”) means premises on which a person acts as a childcare provider;

“Welsh medium education forum” (“*fforwm addysg cyfrwng Cymraeg*”) means a body established by a local authority for the purpose of improving the provision of Welsh medium education in its area, the members of which consist of the local authority and such other persons as the local authority considers appropriate<sup>(6)</sup>.

(2) In these Regulations, the types of childcare are—

- (a) child minding;
- (b) each of the types of day care identified in standards made by the Welsh Ministers from time to time and to which regard must be had pursuant to section 30(3) of the Measure; and
- (c) home childcare providers (nannies).

### **Duty to prepare and publish assessments**

**3.—**(1) The local authority must prepare and publish assessments of the sufficiency of the provision of childcare in its area.

(2) The first assessment must be published by 31 March 2017.

(3) Subsequent assessments must be prepared and published at five yearly intervals.

(4) In preparing an assessment the local authority must have regard to any guidance given by the Welsh Ministers.

(5) The local authority must send a copy of the assessment prepared under paragraphs (2) and (3) to the Welsh Ministers.

### **Action Plan**

**4.—**(1) Each assessment prepared by the local authority must include an action plan.

(2) Where an assessment identifies—

- (a) an insufficiency in childcare provision for children in the local authority area, the action plan must set out what steps need to be taken to improve the opportunities for children to access childcare provision within that local authority area, or
- (b) that opportunities for children to access childcare in the local authority area are sufficient, the action plan must set out what steps need to be taken to maintain opportunities for children to access childcare within that local authority area.

<sup>(4)</sup> S.I. 2014/1996.

<sup>(5)</sup> 2002 c. 21.

<sup>(6)</sup> See the Welsh in Education Strategic Plans and Assessing Demand for Welsh Medium Education (Wales) Regulations 2013 – S.I. 2013/3048 (W 307).

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

5. The Schedule (which prescribes the matters which must be contained in the assessment) has effect.

### **Consultation**

6. In preparing the assessment the local authority must consult such of the following in its area, as it considers appropriate—

- (a) children;
- (b) parents or carers;
- (c) childcare providers;
- (d) persons representing—
  - (i) children;
  - (ii) parents or carers;
  - (iii) childcare providers;
- (e) persons with an interest in childcare;
- (f) persons representing those with an interest in childcare;
- (g) persons representing local employers and employer organisations;
- (h) local employers;
- (i) neighbouring local authorities;
- (j) schools;
- (k) further education colleges.

7. In preparing the assessment the local authority must—

- (a) consult—
  - (i) the Safeguarding Children Board of which it is a Safeguarding Board partner (7);
  - (ii) if established in the local authority's area, the Welsh medium education forum;
  - (iii) if established in the local authority's area, the play monitoring group; and
- (b) notify any Jobcentre Plus offices in the local authority's area and invite the submission of any views.

### **Draft Assessment**

8. Prior to publishing the assessment prepared under these Regulations, the local authority must publish a draft of the assessment on the local authority's website for a period of 28 days to give the persons who have been consulted the opportunity to comment on the draft.

9. The local authority must amend the draft assessment in such way as they consider appropriate in response to any comments received.

### **Method of publication of assessment**

10. The local authority must publish the assessment on the local authority's website.

11. The local authority may provide copies of the assessment to the public upon request.

### **Annual progress reports**

**12.** Following the publication of the first assessment, the local authority must submit to the Welsh Ministers an annual report on the progress of—

- (a) the first assessment;
- (b) the subsequent assessments required by regulation 3(3).

### **Revocation**

**13.** The Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2013<sup>(8)</sup> are revoked.

27 January 2016

*Lesley Griffiths*  
Minister for Communities and Tackling Poverty,  
one of the Welsh Ministers

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<sup>(8)</sup> S.I. 2013/2274 (W 220).

## SCHEDULE

Regulation 5

### Matters to be contained in the assessment

#### 1. In this Schedule—

“childcare costs element of universal credit” (“*elfen costau gofal plant o gredyd cynhwysol*”) means an amount included in an award of universal credit under section 12 of the Welfare Reform Act 2012<sup>(9)</sup> and prescribed in the Universal Credit Regulations 2013<sup>(10)</sup>;

“childcare costs element of working tax credit” (“*elfen costau gofal plant o gredyd treth gwaith*”) means an amount included in an award of working tax credit under section 12 of the Tax Credit Act 2002 and prescribed in the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002<sup>(11)</sup>;

“childcare providers waiting list” (“*rhestr aros y darparwr gofal plant*”) means the list of applicants who await an offer from the childcare provider for a childcare place in respect of a child;

“employer supported childcare” (“*gofal plant â chymorth cyflogwr*”) means an employer support scheme that qualifies for tax relief under sections 35 and 36 of, and Schedule 8 to, the Finance Act 2011<sup>(12)</sup>;

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

“tax free childcare” (“*gofal plant di-dreth*”) means the scheme under section 1 of the Childcare Payments Act 2014<sup>(13)</sup>.

#### 2. Subject to paragraph (3), the local authority’s assessment must include in respect of each type of childcare specified in regulation 2(2), details of—

- (a) the total number of—
  - (i) childcare places filled;
  - (ii) childcare places required;
- (b) the number of full-time and part-time—
  - (i) childcare places filled;
  - (ii) childcare places required;
- (c) the number of—
  - (i) places filled and required in respect of which the childcare costs element of working tax credit or the childcare costs element of universal credit may be used;
  - (ii) places filled and required for which parents would be able to use employer supported childcare or tax free childcare;
  - (iii) places filled and required for children who have special educational needs or who require specialist care due to a disability;
  - (iv) free childcare places filled and required for children aged 2 years old;
  - (v) free foundation phase places filled, required and available for children aged 3 and 4 years old;
  - (vi) Welsh language places filled and required;

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<sup>(9)</sup> 2012 c. 5.

<sup>(10)</sup> S.I. 2013/376 as amended by S.I. 2015/1754.

<sup>(11)</sup> S.I. 2002/2005 as amended by S.I. 2003/701, S.I. 2004/1276, S.I. 2007/2479, S.I. 2010/918 and S.I. 2013/1736.

<sup>(12)</sup> 2011 c. 11.

<sup>(13)</sup> 2014 c. 28.

*Status: This is the original version (as it was originally made).*

- (vii) vacant places; and
  - (viii) children on childcare provider waiting lists;
  - (d) the times at which—
    - (i) the childcare is required;
    - (ii) the childcare is available;
  - (e) the range of services offered by the childcare provider;
  - (f) the range of session lengths offered by the childcare provider;
  - (g) the type of childcare provider that offers flexible childcare hours;
  - (h) the number of childcare providers that offer flexible childcare hours;
  - (i) the age range of children in the types of childcare specified in regulation 2(2); and
  - (j) the range of charges for the childcare.
3. The details in paragraphs 2(iv) and (v) are not required in relation to home childcare providers.

#### **Geographical distribution**

4. The assessment must include details of—
- (a) the geographical distribution of each type of childcare in the local authority's area; and
  - (b) any gaps in that geographical distribution.
5. The assessment may take into account the availability of childcare which is outside the local authority's area but which is available to people living in the area.

#### **Sustainability**

6. The assessment must include details of any factors that have affected the sustainability of existing childcare providers in the local authority's area.

#### **Projected population figures and trends**

7. The assessment must include details of—
- (a) projected population figures for the local authority's area; and
  - (b) the main trends and factors likely to affect those figures.

#### **Gap analysis**

8. The assessment must include an analysis of the supply and demand and any gap in the supply and demand for childcare provision in the local authority's area, including in particular—
- (a) childcare provision for children of parents who work atypical hours;
  - (b) Welsh medium childcare provision; and
  - (c) childcare provision for different language categories.

#### **Summary of unmet needs**

9. The assessment must include a summary of the childcare needs which are not met in the local authority's area including those which relate to the—
- (a) types of childcare available;
  - (b) age of children for whom childcare is available;

- (c) affordability of childcare;
- (d) times at which childcare is available; and
- (e) location of childcare.

#### **Barriers to childcare provision**

- 10.** The assessment must include details of—
- (a) the accessibility of childcare provision;
  - (b) the barriers experienced by—
    - (i) working parents;
    - (ii) parents seeking work or training opportunities;
    - (iii) unemployed households;
    - (iv) low income families;
    - (v) lone parent families;
    - (vi) families from ethnic minority backgrounds;
    - (vii) families with children who have special educational needs, or a disability.

#### **Development and training**

- 11.** The assessment must include details of—
- (a) existing childcare workforce qualifications;
  - (b) workforce training needs.

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### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations revoke and replace, with changes, the Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2013.

Regulation 3 imposes a duty upon local authorities to carry out childcare sufficiency assessments.

Regulation 4 sets out a requirement for an action plan to be prepared as part of the local authority's assessment.

Regulation 5 introduces the Schedule which prescribes the matters that must be contained in the assessment.

Regulations 6 and 7 prescribe the persons who local authorities could consider consulting and the persons they must consult in preparing the assessment.

Regulation 8 requires local authorities to allow the persons who have been consulted the opportunity to comment upon the draft assessment before publication.

Regulations 10 and 11 deal with the requirement to publish the draft assessment.

Regulation 12 requires local authorities to submit annual progress reports to the Welsh Ministers.

**Status:** *This is the original version (as it was originally made).*

These Regulations come into force on 1 April 2016.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Education and Public Services Group, Welsh Government, Cathays Park, Cardiff CF10 3NQ.