

# Agenda Supplement – Constitutional and Legislative Affairs Committee

---

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 12 November 2018

Meeting time: 14.30

For further information contact:

**Gareth Williams**

Committee Clerk

0300 200 6362

[SeneddCLA@assembly.wales](mailto:SeneddCLA@assembly.wales)

## – Item 4,.2

---

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

---

### 4.2 Letter from the Minister for Children, Older People and Social Care : Childcare Funding (Wales) Bill

(Pages 1 – 17)

CLA(5)–28–18 – Paper 11 – Letter from the Minister for Children, Older People and Social Care

CLA(5)–28–18 – Paper 11 – Annex

Attached Documents:

CLA(5)–28–18 – Paper 11

CLA(5)–28–18 – Annex



Huw Irranca-Davies AC/AM  
Y Gweinidog Plant, Pobl Hŷn a Gofal Cymdeithasol  
Minister for Children, Older People and Social Care

Agenda Item 4.2



Llywodraeth Cymru  
Welsh Government

Our Ref: MA - L/HID/0676/18

Lynne Neagle AM  
Chair, Children, Young People and Education Committee

Mick Antoniw AM  
Chair, Constitutional and Legislative Affairs Committee

National Assembly for Wales  
Ty Hywel  
Cardiff  
CF99 1NA

5 November 2018

Dear Lynne and Mick,

### **Childcare Funding (Wales) Bill**

In my response to both the Children, Young People and Education and Constitutional and Legislative Affairs committees following stage 1 scrutiny of the Childcare Funding (Wales) Bill, I outlined my aim to share an initial framework draft of the administrative scheme ahead of stage 3.

The draft framework scheme is attached for the Committees' consideration; it is a work in progress. As previously indicated, I would welcome the opportunity to return to the Committee in the spring to discuss the scheme in more detail.

During the Stage 2 Committee session on 18 October 2018, I also committed to exploring ways in which we could ensure full transparency in respect of the hourly rate paid to childcare providers delivering the Childcare Offer. This was, in part, in response to amendment 32 tabled by Janet Finch-Saunders AM.

Having given this further thought, I have come to the conclusion that my preferred approach would be to include information on the hourly rate in the administrative scheme, which will of course be published and reviewed as and when appropriate. I hope this will help provide the reassurance that the committee is seeking around the Government's intentions to publish details of the hourly rate.

Yours sincerely

**Huw Irranca-Davies AC/AM**  
Y Gweinidog Plant, Pobl Hŷn a Gofal Cymdeithasol  
Minister for Children, Older People and Social Care

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:  
0300 0604400

[Gohebiaeth.Huw.Irranca-Davies@llyw.cymru](mailto:Gohebiaeth.Huw.Irranca-Davies@llyw.cymru)  
[Correspondence.Huw.Irranca-Davies@gov.wales](mailto:Correspondence.Huw.Irranca-Davies@gov.wales)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

# DRAFT: Childcare Funding (Wales) Scheme 20XX

## **EXPLANATORY NOTE**

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

The Welsh Ministers are committed to providing up to 30 combined hours of early education (hereinafter referred to as foundation phase nursery (“FPN”)) and government funded childcare for qualifying children of working parents for up to 48 weeks of the year (“the Offer”).

All children in Wales are entitled to access early education through the FPN ahead of their entrance into mandatory schooling. Parents are not required to accept any or all of the hours of FPN that are offered to their child. The Welsh Ministers require that local authorities offer a minimum of 10 hours FPN; however, some local authorities provide additional hours.

The Offer will provide additional entitlement to funded childcare provision for qualifying children of working parents. The number of hours of FPN to which a child is entitled will form part of the 30 hours of early education and childcare referred to within the Offer. This entitlement is taken into account whether a

parent chooses not to take up any or all of the hours of FPN to which their child is entitled.

The Childcare Funding (Wales) Act 201x (“the Act”) makes provision about the funding by the Welsh Ministers for childcare for qualifying children of working parents.

Regulations made by the Welsh Ministers under sections 1 and 2 of the Act (“the Regulations”) define who is a qualifying child of working parents, and sets out the conditions that a parent (or partner of a parent) must meet in order to be eligible to receive funded childcare.

The Regulations under sections 1 and 2 of the Act also make provision about the application process and how a person who submits an application may seek a review of, or an appeal in respect of, a determination of their eligibility for funded childcare. They also make provision regarding penalties for inaccurate, false or misleading information or actions made in connection with a person’s application for funded childcare.

This Scheme makes provision for the administrative arrangements required to deliver the Offer.

Part [2] specifies the amount of childcare to which an eligible parent of a qualifying child is entitled and details the period during which funded childcare is available.

Part [3] clarifies that an application for funded childcare must be made in accordance with the Regulations.

Part [4] makes provision about the duration of entitlement to funded childcare.

Part [5] makes provision who may deliver funded childcare.

*Part [6] [Process – parental journey following receipt of positive determination of eligibility]*

*Part [7] makes provision about the interface between [payment authority] and childcare providers and the process for paying providers.*

Part [8 ] makes provision about rates of payment to childcare providers and sets out requirements in respect of additional charges.

# DRAFT: Childcare Funding (Wales) Scheme 20XX

## PART 1

### General

#### **Title, commencement and application**

1. The title of this Scheme is the Childcare Funding (Wales) Scheme 20xx.

2. This Scheme comes into force on XXX and applies in relation to Wales.

#### **Interpretation**

3. In this Scheme—

“the Act” (“ ”) means the Childcare Funding (Wales) Act 20xx;

“the Regulations” (“ ”) means the [Regulations to be made under sections 1 and 2 of the Act];

“local authority” (“ ”) means a local authority in Wales;

“FPN” (“ ”) has the meaning given in paragraph [6];

“qualifying child” (“ ”) means a child—

(a) who comes within the description specified in (regulation ( )) of the Regulations,

(b) whose parent satisfies the conditions specified in (regulation ( )) of the Regulations,

(c) in respect of whom the parent of the child has made a declaration in accordance with (regulation ( )) of the Regulations;

“term time” (“ ”) means the school term time applicable for the qualifying child concerned;

“working parent” (“ ”) is a person who has received a determination that [for the period specified in the determination] the criteria specified in or by virtue of [section 1(2)(a),(b) and (c)] of the Act are met in relation to the child in respect of whom the declaration was made;

#### **Revision**

4. The Welsh Ministers may at any time revise, revoke or add to the provisions set out in this Scheme.

## **PART 2**

### **Childcare offer**

#### **Childcare Offer**

5. The Welsh Ministers will provide up to 30 hours of FPN and childcare for qualifying children of working parents.

## Early education

6. “FPN” means nursery education (within the meaning of section 117 of the School Standards and Framework Act 1998 (“the 1998 Act”)) the provision of which a local authority is under a duty to secure is sufficient by virtue of section 118 of the 1998 Act and regulation 4 of the Education (Nursery Education and Early Years Development and Childcare Plans) (Wales) Regulations 2003(1).

7. In accordance with the provisions referred to in paragraph [6], all local authorities are required to offer a minimum of 10 hours of FPN for all children from the beginning of the school term after their third birthday until the earlier of a child reaching compulsory school age(2) or being offered a full time school place.

8. A local authority may provide more than 10 hours of FPN at its discretion. The exact number of hours of FPN to which a child is entitled will be notified to a parent by the local authority in which the child resides.

- 
- (1) In accordance with these provisions, all local authorities in Wales must provide part time FPN free of charge for children who have as a minimum attained their third birthday in accordance with the requirements set out in the Statutory Guidance issued by the Welsh Ministers under section 118 of the School Standards and Framework Act 1998. *See* Foundation Phase Provision for three and four year olds: Guidance for local authorities in Wales (Guidance document 233/2018) issued September 2018.
- (2) “Compulsory school age” is defined in accordance with section 8 of the Education Act 1996 and the Education (Start of Compulsory School Age) Order 1998 (SI 1998/1607). A child begins to be of compulsory school age when the child attains the age of five when the child attains that age on “prescribed day” (either 31<sup>st</sup> August, 31<sup>st</sup> December or 31<sup>st</sup> March), otherwise at the beginning of the prescribed day next following the child’s fifth birthday.



9. A working parent is not required to take up all or any of the FPN offered by a local authority to their child in order to access the childcare element of the Offer.

10. Unless paragraph [11] applies, In calculating the number of hours of funded childcare to which a qualifying child is entitled, account will be taken of all the hours of FPN to which a child is entitled (whether they are utilised in full or at all).

11. This paragraph applies if a child accesses FPN provision in a different local authority area to the one in which they live.

12. If paragraph [11] applies, the number of hours of funded childcare to which the qualifying child is entitled will be calculated on the number of hours of FPN the child actually receives (and not the number of hours to which the child is entitled).

### **Childcare**

13. “Childcare” means care [or other supervised activity] for a child in respect of which the provider is required to be registered under Part 2 of the Children and Families (Wales) Measure 2010 or under Part 3 of the Childcare Act 2006, and “funded childcare” means any childcare which is delivered under the Offer.

### **30 hours –term time provision**

**14.** During each of the 39 weeks of term time<sup>(1)</sup>, the number of hours FPN to which a qualifying child is entitled forms part of the 30 hours referred to in paragraph [ ].

**15.** The number of hours of funded childcare to which a qualifying child is entitled during term time is the balance between the number of hours of FPN offered to the child and 30 hours.

**16.** If a working parent chooses not to take up any or all of the hours of FPN offered to a child this does not affect the calculation under paragraph [15 ].

**17.** A working parent may not substitute any or all of the hours of FPN offered to their child for hours of funded childcare under the Offer.

**18.** A working parent is not required to take any or all of the hours of funded childcare offered to their qualifying child. A working parent may take up any number of the hours which are offered.

**19.** A working parent may elect to use their entitlement to funded childcare flexibly but the combined number of hours of funded childcare and FPN may not exceed 30 in any week of term time provision.

---

(1) For the purpose of the Offer school term time is 39 weeks of the year. This is based on the 195 days each year during which teachers are required to be available for work or training. The exact dates of a school term are set by local authorities and may vary from authority to authority.

*[This Part will include provision that refers to:  
Entitlement during inset days]*

**30 hours – holiday provision**

**20.** The maximum number of weeks during which funded childcare is available by way of holiday provision is 9 weeks.

**21.** Entitlement to holiday provision is calculated in accordance with paragraph [31] .

**22.** A working parent may choose up to 9 from the 13 weeks which are not term time in which to use their qualifying child’s entitlement to holiday provision.

**23.** During each of the weeks of holiday provision identified by a working parent the amount of childcare to which a qualifying child is entitled is 30 hours<sup>(1)</sup>.

**24.** A working parent may elect to use the entitlement to funded childcare flexibly but the number of hours of funded childcare may not exceed 30 in any week of holiday provision.

---

(1) Early education provided through FPN is only delivered during school term time.

## PART 3

### Eligibility for the Offer

#### **Eligibility**

25. An application for funded childcare must be made in accordance with [regulation ( ) / Part ( )] of the Regulations.

26. A determination of whether a child is a “qualifying child” will be made by the Welsh Ministers in accordance with [regulation ( ) / Part ( )] of the Regulations.

27. A determination of whether a parent is a “working parent” will be made by the Welsh Ministers in accordance with [regulation ( ) / Part ( )] of the Regulations.

28. An application for a review of, or an appeal to the First-tier Tribunal in relation to, a determination of the Welsh Ministers as to eligibility for funding for childcare under the Offer must be made in accordance with [regulation ( ) / Part ( )] of the Regulations.

*[This Part will include provision that refers to:*

*Period of validity of the declaration/determination*

*What happens when parents fall out of eligibility (Temporary Exemption Provision)]*

## PART 4

### Availability of the Offer

#### **Period of entitlement**

**29.** Unless paragraph [ 30] applies, a working parent may access funded childcare from the beginning of the school term after their qualifying child's third birthday until, whichever is the earlier of—

- (a) the point at which the child is offered a full-time education place<sup>(1)</sup>, or
- (b) the beginning of the September following their child's fourth birthday.

**30.** If a local authority specifies a different date by which a child must have reached their third birthday in order to begin to access entitlement to FPN, a working parent may access the funded childcare to which their qualifying child is entitled beginning on the same day as their child's entitlement to FPN begins.

#### **Entitlement to holiday provision**

**31.** A qualifying child will be entitled to 3 weeks of holiday provision for each school term in which the child receives FPN.

---

(1) This is usually the September after a child's fourth birthday. Upon being offer a full time place in education the child will no longer qualify for the Offer. Parents may not refuse the offer of a full time education place in favour of continuing to access the Offer.

**32.** A working parent must identify any week in which they intend to utilise their qualifying child's entitlement to holiday provision in accordance with paragraph [19].

**33.** Unused weeks of holiday provision may be carried forward by a working parent and used during any week which is not term time provided their child remains a qualifying child for the purposes of the Offer.

**Early offer of a full time place in education – holiday provision**

**34.** Where a local authority offers a child a place in full-time education earlier than the time specified in paragraph [29(b)], a child will be entitled to three weeks of holiday provision for each school term until the beginning of the September following the child's fourth birthday<sup>(1)</sup>.

**35.** Where paragraph [32] applies, a working parent will be entitled to utilise any holiday provision to which their child is entitled during any week which is not term time until the beginning of the September following the child's fourth birthday

---

(1) This is to ensure that there is consistency in the delivery of the Offer and to prevent a working parent whose child is offered a full time place in education earlier than the usual beginning of the September following the child's fourth birthday from being adversely affected.

## PART 5

### Childcare provision

#### Childcare providers

**36.** Funded childcare may be provided by a childcare provider who is—

- (a) a childminder or day care provider who is registered with the Welsh Ministers in accordance with Part 2 of the Measure;
- (b) an early years provider who is registered with Her Majesty's Chief Inspector of Education, Children's Services and Skills in accordance with Part 3 of the Childcare Act 2006.

**37.** Reference to a childminder in paragraph [36(a)] includes a childminder who provides childcare for a child who is a relative provided that the childcare is not provided at the child's home.

**38.** A working parent is responsible for making arrangements with one or more childcare providers<sup>(1)</sup> to secure the provision of funded childcare for their qualifying child.

**39.** In this Part—

“the Measure” (“ ”) means the Children and Families (Wales) Measure 2010;

---

(1) In order to ensure that a working parent has flexibility to meet their individual circumstances, the parent may make arrangements with more than one provider to secure funded childcare for the same qualifying child.

“child minder” (“ ”) and “day care provider” (“ ”) each have the meaning given in section 19 of the Measure;

“early years provider” (“ ”) has the meaning given in section 96(3) of the Childcare Act 2006;

“relative”, in relation to a child, means a grandparent, aunt, uncle, brother or sister, whether of the full blood or half blood or by marriage or civil partnership.

## *PART 6*

*Process: Parental journey following receipt of positive determination of eligibility*

*Including provision relating to:*

*Compensation for delays in determination of application*

*Arrangements with childcare provider*

*Arrangements with providers for non-funded childcare*



## *PART 7*

*Interface between [administration authority]*

*and providers*

*Provider registration*

*Provider agreement*

*Process for payments*

*Data collection*

*Code of practice on Ethical Employment in Supply Chains*

## PART 8

Payments

### **Rate of payment**

40. Childcare providers who provide funded childcare will be paid at the national rate of [£4.50] per hour.

41. The national rate covers the cost of the provision of funded childcare only.

42. Childcare providers may not impose any additional charge for the provision of funded childcare.

### **Additional charges**

43. Childcare providers who provide funded childcare may impose a charge for additional elements ancillary to the provision of funded childcare such as food, drink, transport and any off-site activity which incurs a cost.

**44.** Any additional charges imposed by a childcare provider in accordance with paragraph [42] must take account the Welsh Minister's guidelines [*reference required to name of the document, publication date and details of where copies may be obtained electronically or otherwise*].

**45.** A working parent is responsible for any additional charges imposed by the childcare provider in accordance with paragraph [43].

DRAFT