

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

This Explanatory Memorandum has been prepared by Education and Public Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2016. I am satisfied the benefits outweigh the likely costs.

Lesley Griffiths AM, Minister for Communities and Tackling Poverty
29 January 2016

1. Description

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

The Regulations place a duty on Local Authorities to undertake childcare sufficiency assessments in their local authority area and also prescribe the matters to be included within the assessment, including consultation and publication requirements, action planning and annual reporting requirements.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no matters of special interest to the Committee.

3. Legislative background

Sections 26(1)(a) and (2) of the Childcare Act 2006, provides the Welsh Ministers with the power to make regulations requiring Local Authorities to:

- prepare assessments of the sufficiency of child care provision in their area;
- review such assessments;
- consult prescribed persons; and
- have regard to guidance issued by Welsh Ministers in preparing an assessment.

These Regulations are subject to annulment by the National Assembly for Wales via the negative resolution procedure.

4. Purpose & intended effect of the legislation

Currently, Local Authorities are required to undertake a Childcare Sufficiency Assessment (CSA) every three years and a 'refresh' on an annual basis, which is updated to take into account any changes or impacts on childcare provision during the year. The most recent Childcare Sufficiency Assessments (CSAs) were published on 30 April 2014.

These Regulations will change the CSA planning cycle to require Local Authorities to:

- prepare and publish a CSA and action plan on a five yearly basis; and
- submit annual reports on progress to the Welsh Ministers

The first assessment under these Regulations must be published by 31 March 2017.

A series of changes have also been made to the matters which must be contained in the assessment.

Provision has been made to strengthen consultation linkages between the CSA and other key policy areas.

These changes have been developed in close collaboration with the Informal Childcare Working Group, consisting of representatives from key public bodies and the childcare sector in Wales, which was established to assist in further refining the information to be captured as part of the CSA, including the development of systems and mechanisms, to inform the future process for the CSAs in Wales.

The changes to the Regulations are required to ensure the CSA process in future is fit for purpose. The proposed changes will result in:

- a more consistent and standardised approach to the way in which data is reported and captured, resulting in there being sufficient information available at a national level to inform the development of national policies and programmes and provide an all Wales level picture of provision
- a more meaningful and useful information source, which will enable Local Authorities to efficiently manage and assess the sufficiency of childcare provision
- Local Authorities having better clarity on the information to be captured and assurance the statutory requirements of the duty are being met
- an approach which is proportionate and less burdensome to Local Authorities
- better alignment and integration with other key planning and assessment processes at a local and national level

5. Consultation

Details of the consultation can be found in the RIA below.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

The options outlined below give consideration to the CSA process and planning cycle.

Option 1: Do nothing

This option would result in Local Authorities continuing with the CSA in its current format, which would involve undertaking:

- a CSA every three years; and
- a 'refreshed' CSA on an annual basis

Continuing with the CSA in its current format would result in some of the key weaknesses identified under the current process, including those highlighted as part of the consultation, not being addressed, some of which are cited below:

- Consistency - a lack of consistent information available at a national level, making it difficult to draw comparisons on what childcare provision looks like at an all Wales level
- Integration - a need to strengthen alignment and synergy with other key policies, programmes and assessment processes, as a means of avoiding duplication, reducing burdens and streamlining resources
- Relevance and limitations - certain aspects of the CSA process being more useful than others, and others being more difficult to undertake

Option 2: 3 Year Cycle

This option would result in Local Authorities adhering to the following process:

- a CSA and Action Plan every three years; and
- annual report

Placing a requirement on Local Authorities to undertake annual progress reports as opposed to undertaking a 'refreshed' CSA on an annual basis would address some of the issues highlighted surrounding the timescales involved in undertaking the 'refreshed' CSA i.e. the refresh taking as much time to complete as a full CSA, the fact there were limited changes to report on in such a short timescale and very little new data available. The majority of the consultation responses were in favour of annual reporting as opposed to undertaking a 'refreshed' CSA.

Whilst the introduction of annual reports provides a more efficient means of monitoring progress on an annual basis, the volume of the information which needs to be captured for the full CSA, coupled with the length of time it takes to

develop the document does not appear to be proportionate with the changes and developments which Local Authorities are able to report on over the three years. A main concern highlighted was the fact changes over the three year timeframe are more often than not, minimal, resulting in there not being any significant changes or developments to report on in the full CSA.

This has led to a burdensome process with very little added value and suggests a longer timeframe is required to enable Local Authorities to effectively deliver and report on any changes and developments surrounding the sufficiency of childcare provision within their local authority area.

Option 3: 5 Year “Refreshed” Cycle

This option would result in Local Authorities adhering to the following process:

- a CSA and Action Plan on a five yearly basis;
- a ‘refreshed’ CSA and Action Plan during the third year of the five year cycle; and
- an Annual Report, reporting on progress over the year

This is the option that was consulted upon. The majority of respondents were in favour of changing the planning cycle from 3 years to 5 years. Changing the planning cycle from 3 years to 5 years would result in the following benefits:

- the new approach would be less time consuming, reducing the burden on Local Authorities and pressure on staff;
- a five year planning cycle would allow more time for developments and progress to be made;
- it provides opportunities for strengthening alignment and integration with other key planning and assessment processes;
- allows more opportunity for comparison and to assess progress; and,
- may help to improve response rates, for example from employers

The majority of respondents were also in favour of annual reporting. However, in light of the fact changes over the three year period are more often than not likely to be minimal, the requirement to undertake a ‘refreshed’ CSA in the third year, is likely to provide little added value.

Option 4: 5 Year Cycle

This option would result in Local Authorities adhering to the following process:

- a CSA and Action Plan on a five yearly basis; and
- an Annual Report, reporting on progress over the year

Changing the planning cycle from 3 years to 5 years would provide a much more efficient timeframe for assessing the sufficiency of childcare provision across Wales. It would result in the full CSA becoming a more robust and meaningful information source and would give Local Authorities the time to

effectively plan, manage and report on the sufficiency of childcare provision in their local authority area. It would result in all the benefits highlighted in Option 3 above being fully achieved.

A majority of the respondents to the consultation queried the need to undertake the 'refreshed' CSA highlighting an annual progress report would suffice. In light of the fact changes year on year over the duration of the three year cycle are minimal, it is believed annual reports would provide a much more efficient means of monitoring and reporting progress.

The consultation did raise a few concerns about changing the planning cycle from 3 years to 5 years. The main issue was ensuring any key changes or developments or changes in trends and data are not lost under a longer planning cycle. To address this, the format and content of the annual report will be developed in a way which ensures the information captured is proportionate and reflects any significant changes and developments affecting the sufficiency of childcare provision in the local authority area.

This is the preferred option

Costs & benefits

As a means of assessing the impact of changes being proposed under the new regulations, a questionnaire was issued to all Local Authorities in Wales. Twelve of the 22 Local Authorities responded to this request for information. Whilst it has proved difficult to provide an exact cost against the potential impact of any proposed changes, the responses received provide a good overview of the potential savings, costs and benefits relevant to the options.

Option 1 – Do nothing

This option maintains the current policy position and as such, there are no additional costs or benefits to Local Authorities in implementing the regulations under this option.

Under the current system, it is apparent the costs and resources involved in undertaking the full CSA varies between different local authorities. In terms of staff numbers, this ranges from responsibility for the full CSA falling on 1 or 2 individuals, or in some cases up to 9 members of staff, who would work on distinct areas over a period of time.

The time spent in undertaking the full CSA also varies between Local Authorities, with figures quoted ranging from approximately 5 members of staff working a total of 34 weeks, 2 members of staff working 18 hours a week over a 3-4 month period, 3 staff working a total of 615 hours and 3 staff working 750 hours over 9 months.

The approximate total costs, including staff time and other costs such as printing, translation and consultation costs, involved in undertaking the full CSA ranges from approximately £11,550 to £53,700. Assuming this range reflects the position across all Local Authorities in Wales, the total cost is estimated to range between approximately £254,100 and £1,181,400 in each year that a new CSA is produced.

In terms of the 'refreshed' CSA, the amount of staff time follows the same pattern as the full CSA. Time spent in staff hours varies, with figures quoted ranging from 1 officers time over a 1 month period, 1 officers time utilising the expertise of others, involving a total of 148 hours, 280 hours involving 9 members of staff. In terms of staff costs, these ranged from £2,500 to £15,200. On this basis, the cost to Local Authorities across Wales is estimated to range between approximately £55,000 and £334,400. This cost is incurred in each year that a refreshed CSA is required.

The variance in the time allocated and the costs involved in undertaking the CSA process goes some way in explaining the lack of consistency in the way information is collated and reported under the current system.

Option 2 – 3 Year Cycle

In terms of undertaking the full CSA, whilst the costs would more or less remain the same, there could be potential savings in relation to certain elements, for example, reduced printing costs, with Local Authorities only having to print copies of the full CSA upon request, as per the regulations. However, this represents a relatively small proportion of the costs identified under Option 1. Local Authorities are already undertaking action planning as part of the current CSA process, therefore there will be no additional costs associated with making this a requirement.

Whilst developing the annual report would still involve an element of staff time and resources, we believe this would not be as onerous as undertaking the 'refreshed' CSA in its current format. Local Authorities would still be required to report on progress and update on any key development and changes in the market which have occurred over the year, but the volume of information to be captured would not be as onerous as currently captured. The costs under this option are therefore expected to be lower than under Option 1.

Option 3 – 5 Year “Refreshed” Cycle

A change in the planning cycle from 3 years to 5 years is expected to result in savings to Local Authorities in terms of staffing time, costs and resources, purely due to the fact the full CSA and Action Plan would be produced on a less frequent basis. While the costs to Local Authorities of developing a CSA is expected to fall in the range of £254,100 to £1,181,400, this cost would be incurred every 5 years rather than every 3 years.

Similarly, there would be a cost-saving to Local Authorities compared to Option 1 as the 'refreshed' CSA would not have to be undertaken on an annual basis, as is the case under the current system. As outlined in Option 2, developing annual reports would still involve an element of staff time and resources but the volume of information captured would not be as onerous as currently captured for the 'refreshed' CSA, which could lead to potential savings.

Option 4 – 5 Year Cycle

As with Option 3, a change in the planning cycle from 3 years to 5 years is expected to result in savings to Local Authorities in terms of staffing time, costs and resources, purely due to the fact the full CSA and Action Plan would be produced on a less frequent basis.

Likewise, the fact the volume of information to be captured as part of annual reporting would be less than currently captured for the 'refreshed' CSA, will potentially lead to a reduction in terms of staff time, costs and resources.

We don't expect there to be any impact on childcare providers as a result of changing the planning cycle from 3 years to 5 years.

A five year planning cycle provides a more realistic timeframe for Local Authorities to be able to implement and action the findings of the CSA within their local authority area. It reduces burden and is more proportionate with the changes and developments which are likely to be incurred and reported upon over this period.

Option 4 provides an opportunity to strengthen alignment with certain planning processes, in particular the assessment of local well being prepared to inform the local well being plans, where there is a potential for both systems to run in parallel, reducing burden on Local Authorities in terms of the data collation aspects of the CSA.

Introducing a 'light touch' approach to reporting through annual reports provides a much more efficient and meaningful means of reporting and monitoring progress. The consultation responses provide a useful basis to inform the content of the annual reports, with there being an emphasis on measuring progress against the priorities and actions outlined in the action plan. The annual reports will be developed in a way which ensures the information to be captured is proportionate with the information and data available, with consideration being given to any significant changes and developments which may have arisen during the year.

Summary of the preferred option

In light of the analysis of the costs and benefits of each option, Option 4 has been chosen as the most suitable option.

As well as the savings which could potentially be incurred in terms of staff time and resources, option 4 will also result in significant benefits and improvements being made to the CSA process.

We believe the changes proposed under this option together with the work undertaken by the Informal Childcare Working Group in refining the content of the CSA provides a viable and robust process for the future development of the CSAs in Wales.

Consultation

A full 12 week consultation entitled 'Review of the Childcare Sufficiency Assessment Duty on Local Authorities' took place between 7 August 2014 and 30 October 2014, which set out a proposal for a future CSA process in Wales.

The consultation responses were published in March 2015 (<http://gov.wales/consultations/people-and-communities/review-of-childcare-sufficiency-assessment-duty-on-local-authorities/?lang=en>).

Following the consultation, an Informal Childcare Working Group was established, consisting of representatives from key public bodies and the childcare sector in Wales. They have been instrumental in further refining the content requirements and inform the future development of the CSAs in Wales.

The changes made to the regulations, take account of the consultation responses, and fully reflect, the work undertaken by the Informal Childcare Working Group.

In ascertaining the regulatory impact of any proposed changes to the regulations, in terms of process and planning cycle, a questionnaire was issued to all Local Authorities in Wales to seek their views.

Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of	No

The competition filter test	
Question	Answer yes or no
businesses/organisation?	
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Presenting the results of the competition filter test

The competition filter test indicated the regulations posed a very low risk of having detrimental impact on competition. The changes made to the regulations will result in an improved process, which will enable Local Authorities to effectively comply with their duty to assess the sufficiency of childcare provision in their local authority area.

Post implementation review

Under the regulations, Local Authorities will be required to provide a copy of their CSA and annual report to Welsh Ministers. Welsh Government will review these documents to monitor the effectiveness of the regulations.

Welsh Government will also work with the Informal Childcare Working Group to develop the guidance, which will support the implementation of the regulations, as a means of providing further clarity and ensuring the process is fit for purpose.