

CHILDCARE FUNDING (WALES) ACT 2019

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Childcare Funding (Wales) Act 2019 which was passed by the National Assembly for Wales on 12 December 2018 and received Royal Assent on 30 January 2018.
2. They have been prepared by the Education and Public Services Group of the Welsh Government in order to assist the reader of the Act.
3. The Explanatory Notes should be read in conjunction with the Act but are not part of it. They are not meant to be a comprehensive description of the Act and where an individual section does not seem to require any explanation or comment, none is given.

OVERVIEW OF THE ACT

4. The Act imposes a duty on the Welsh Ministers to fund childcare for the children of working parents, as long as the children and parents meet specific eligibility criteria. The Act also gives the Welsh Ministers power to make regulations to make arrangements for the establishment of a national application and eligibility checking system for the childcare funding scheme and will permit the making of provision to allow for the sharing of data between specified persons (for example, Her Majesty's Revenue and Customs (HMRC) and other UK Government Departments) to facilitate this.

POLICY BACKGROUND

5. The Act reflects a commitment in the Welsh Labour manifesto, *Together for Wales (2016)*, to provide 30 hours per week of government funded early education and childcare to the working parents of eligible three and four year olds in Wales for up to 48 weeks per year.

TERRITORIAL EXTENT AND APPLICATION

6. The provisions in the Act extend to England and Wales (as one legal jurisdiction).

COMMENTARY ON SECTIONS

Section 1 –Funding of childcare for children of working parents

7. Section 1(1) requires the Welsh Ministers to provide funding for childcare for qualifying children of working parents. Section 1(2) requires the Welsh Ministers to specify in regulations the amount of childcare to be secured in accordance with the funding provided under section 1(1). Section 1 (3) specifies certain fundamental requirements that a child must meet to be provided with funded childcare (including that the child is under compulsory school age, a child of working parents, and in Wales). It also provides the Welsh Ministers to impose other requirements in regulations. These requirements may (subsection (5)) relate to a parent of the child.
8. Regulations made by the Welsh Ministers under this section will flesh out these requirements, for instance by specifying when a person is to be treated as being in paid work, when a child is to be treated as being in Wales, and when a person is to be treated as being another's partner. For example, the regulations may specify that a person who is temporarily away from the workplace in certain circumstances, such as taking parental leave, will be considered to be in work for the purposes of determining eligibility for funding.

Section 2 - Power to make provision about administration etc. of funding.

9. This section gives the Welsh Ministers the power to make regulations setting out arrangements for administering and operating the funding scheme established by virtue of section 1. These regulations may, for example, include details of how a parent, or partner of a parent, of an eligible child can apply for the funding, and how eligibility checks will be undertaken. Sections 3 to 7 of the Act contain a non-exhaustive list of the type of provision that may be made in regulations under this section.

Section 3 - Requirement for parents etc. to provide information

10. The effect of this section is that anyone who is currently claiming funding, or claiming it for the first time, and so has to make or is making a declaration under section 1, may be required to provide information and documents specified in the regulations, either to the Welsh Ministers or to someone (for instance a scheme administrator) providing services to the Welsh Ministers.
11. The regulations may also make provision for a person who provides false or misleading information to be subject to a financial penalty. "False or misleading" in this context means false or misleading in a material particular. This means, in practice, that a person would only be liable to a penalty if the false or misleading information provided was such as to have a bearing on whether or not a person would be eligible for the offer, such as details of their earnings, the age of the child etc. Section 3(5) deals with the interrelationship between a penalty under this section, and proceedings for an offence, say for obtaining a pecuniary advantage by deception. It provides that a person who has been convicted of an offence may not also be subjected to a penalty in respect of the same circumstances.

12. Section 3(6) provides that the maximum amount of any financial penalty that can be levied in regulations made under section 2 is £3,000. The Welsh Ministers have power to amend this maximum amount in regulations (see section 11 of the Act).

Section 4 - Provision of information by third parties

13. Section 4 of the Act specifies that the regulations (which may be made under section 2) may make provision for certain persons specified in the section (see below) to provide information to the Welsh Ministers or a person providing services to them. The information in question must be specified in the regulations, or described in them, and can only be dealt with in this way if the Welsh Ministers consider it is needed for determining eligibility for funding under section 1 of the Act.
14. The regulations may permit HMRC, a government department or a Minister of the Crown (or a person providing services to any of them) to provide the Welsh Ministers (or a person providing services to the Welsh Ministers) with any information of this kind. But this will be subject to the “appropriate Minister” consenting to this: the meaning of “appropriate Minister” is set out in section 4(6).
15. A local authority, or a person providing services to a local authority, may be either required or permitted by the regulations to provide information of this kind to the Welsh Ministers or to a person providing services to them. (In other words, in this context, but not in that described in paragraph 13 a requirement to provide information may be imposed).

Section 5 – Onward disclosure of information disclosed by virtue of section 3 or 4

16. Section 5 makes provision about the onward disclosure of information that has been disclosed by virtue of section 3 or 4. Section 5(3) requires the appropriate Minister to give consent to any regulations which contain provision about the onward disclosure of information provided by HMRC, a Minister of the Crown, a government department or a person providing services to any of these persons. “Appropriate Minister” has the same meaning in this section as in section 4, namely the Treasury in relation to HMRC and the Secretary of State for a government department or a Minister of the Crown.
17. Section 5(4) enables any regulations relating to the onward disclosure of information to make provision for criminal offences in connection with the unauthorised onward disclosure of information that has been shared for the purposes of making a decision about a person’s eligibility to receive Government-funded childcare.
18. In accordance with section 5(5) the maximum penalty which may attach to any criminal offence created by virtue of this section cannot exceed a 2 year prison sentence (whether or not accompanied with a fine).

Section 6 - Reviews of determinations and appeals to the First-tier Tribunal

19. Section 6 of the Act specifies that regulations which may be made under section 2 may make provision about what happens when a person wants to challenge a determination about their eligibility for funding. The regulations may make provision about reviews of decisions and for appeals to the First-Tier Tribunal. If regulations are made under section 2 of the Act which make provision about the imposition of financial penalties (by virtue of section 3) then section 6(2) requires that they must also make provision to enable a person to challenge the imposition or the amount of any financial penalty imposed.

Section 7 - Power to confer functions on local authorities

20. Section 7 gives the Welsh Ministers the power to make provision in the regulations that may be made under section 2 to confer powers or impose obligations on Local Authorities in connection with funding under section 1. The regulations may also make provision which requires Local Authorities to have regard to any guidance issued by the Welsh Ministers to support the administration and operation of the funding scheme.

Section 8 - Duty to prepare and publish report on the effect of Act

21. Section 8 requires the Welsh Ministers to prepare and publish a report on the effect of the Act and on the operation of any arrangements made for the purposes of section 1 of the Act. The report must be prepared and published as soon as practicable after the end of five years beginning with the day on which section 1 comes into force.

Section 9 - Consequential amendment to the Commissioners for Revenue and Customs Act 2005

22. Section 9 of the Act contains an amendment to section 18 of the Commissioners for Revenue and Customs Act 2005 ("the 2005 Act") which makes provision about HMRC's duty of confidentiality. Section 18 of the 2005 Act lays down the code of confidentiality for HMRC and its officials in relation to the information held by HMRC in connection with a function of HMRC and specifies the circumstances in which disclosures can be made.
23. The amendment to the 2005 Act will insert a new paragraph into section 18(2) of that Act which will enable HMRC to disclose information which is required for the purposes of any regulations made under this Act to the Welsh Ministers (or to a person providing services to the Welsh Ministers).
24. The 2005 Act forms part of the law of the United Kingdom's three legal jurisdictions: that of England and Wales; that of Scotland; and that of Northern Ireland (see section 56 of the 2005 Act for the provision specifying the Act's UK-wide extent).
25. Section 108A(2)(b) of the Government of Wales Act 2006, which sets out the rules governing the limits of the National Assembly's legislative competence, restricts the extent of Assembly Acts, including amendments to other legislation made by those Acts, to the jurisdiction of England and Wales.

26. This means that the amendment to section 18 of the 2005 Act will have a more limited extent than those provisions of the 2005 Act which extend across the UK. So section 18 of the 2005 Act, as it extends to the jurisdictions of Scotland and Northern Ireland, will exist without the amendment contained in section 9 of the Act. But the amendment will have effect for the purposes of the jurisdiction of England and Wales.

Section 11 - Power to change amount of financial penalty for provision of false or misleading information

27. This section confers a power on the Welsh Ministers to make regulations varying the maximum penalty of £3,000 specified in section 3(6) (penalty for providing false or misleading information) by making an amendment to that section.

Section 12 - Supplementary provision about regulations under this Act

28. This section explains that powers to make regulations under the Act are to be exercised by statutory instrument (which means that certain procedural and other requirements contained in the Statutory Instruments Act 1946 apply in relation to regulations made under the Act) and specifies that the affirmative procedure will apply to each use of the regulation-making powers. This means that any regulations made under the Act are subject to the express approval of the National Assembly for Wales.
29. Section 12 also makes it clear that any regulations made under the Act may confer a discretion on any person. The power to confer a discretion is necessary in order to give the Welsh Ministers flexibility in the operational arrangements to be made for administering any funding provided in accordance with section 1, for example, when making a decision whether to impose a penalty for the provision of false or misleading information provided by a person in connection with their application for funding. A person exercising a discretion in such circumstances must exercise reasonable judgement in order to determine whether or not to impose a penalty and, if a penalty is imposed, the amount of that penalty.
30. Any regulations made under the Act may also make different provision for different purposes, make consequential, incidental, supplementary, transitory, transitional or saving provision.

Section 13 - Coming into force

31. Section 13(1) sets out the provisions of the Act that will come into force one day after the Act receives Royal Assent.
32. Any sections of the Act that are not mentioned in subsection (1) will come into force on a day specified in a commencement order (or orders) made by the Welsh Ministers in accordance with subsection (2). The Welsh Ministers have power to specify different commencement dates and may commence provisions for different purposes or in relation to specified areas.

Section 14 - Short title

33. This section states that the short title of this Act will be the Childcare Funding (Wales) Act 2019.

RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES

34. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: <http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?Id=21394&Opt=0>

Stage	Date
Introduced	16 April 2018
Stage 1 - Debate	17 July 2018
Stage 2 - Scrutiny Committee - consideration of amendments	18 October 2018
Stage 3 Plenary - consideration of amendments	5 December 2018
Stage 4 Approved by the Assembly	12 December 2018
Royal Assent	30 January 2019

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