

CHILDCARE ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 1: General Functions of Local Authority: England

Sections 1- 5: overview

22. **Section 1** imposes a duty on local authorities in England to improve the well-being of young children in their area and to reduce inequalities between such children. Sections 2 to 5 are related to this duty. In particular, local authorities are required to make arrangements to secure that early childhood services are provided in an integrated manner. Local authorities are already involved in the provision of children's centres under the "Sure Start" scheme and it is expected that children's centres will play an important role in the provision of integrated childhood services. Children's centres are places where children under 5 years old and their families can access integrated services, information and help from multi-disciplinary teams of professionals. Typically the services include care and education, health, family support services, information for parents and employment services.
23. Under section 4, local authorities and their key partners in health and employment services will have a reciprocal duty to work together in delivering integrated childhood services to improve outcomes for young children and reduce inequalities between them. In carrying out their duties in relation to the provision of integrated childhood services, local authorities must also seek to involve providers from the private and voluntary sector and parents. They must also have regard to relevant information about the views of young children.

Section 1: General duties of local authority in relation to well-being of young children

24. **Section 1** places a duty on local authorities to improve the well-being of all young children in their area and to reduce inequalities between those achieving the poorest outcomes and the rest. This will mean that, when improving the outcomes for all children, local authorities will need to improve the outcomes of the most disadvantaged at a faster rate.
25. A child is regarded as a young child until 1st September following his fifth birthday (section 19). Well-being is defined in a way which is related to the five 'Every Child Matters' outcomes of being healthy, staying safe, enjoying and achieving, making a positive contribution and achieving economic well-being. The section allows the Secretary of State to set targets for local authorities to improve these outcomes and narrow the gaps in achievement, and requires local authorities to have regard to guidance issued by the Secretary of State.

Section 2: Meaning of "early childhood services" for purposes of section 3

26. **Section 2** defines “early childhood services” for the purposes of section 3. These are the services central to the improvement of outcomes for young children. They are:
- early years provision, i.e. integrated early education and childcare;
 - social services relating to young children and their parents, for example, supervised contact and early intervention for families identified as needing support;
 - health services relevant to young children and their parents, for example, health visitors, ante-natal and post-natal care;
 - services provided under section 2 of the Employment and Training Act 1973, assisting or encouraging parents (and prospective parents) to obtain or retain employment, as delivered through Jobcentre Plus (such services are included because providing support for parents entering work is a key way of enhancing children’s economic well-being);
 - information services for parents as described under section 12.
27. **Section 2** also defines a “parent” and a “prospective parent.”

Section 3: Specific duties of local authority in relation to early childhood services

28. **Section 3** requires local authorities to deliver the improved outcomes set out in section 1 by ensuring that early childhood services (as defined in section 2) are delivered in an integrated way that facilitates access to services and maximises the benefits to children, parents and prospective parents.
29. The local authority is also required to take steps to identify parents who are unlikely to take advantage of early childhood services that may benefit them, and to encourage them to take advantage of those services. In many cases, this will be inextricably tied to the duty to narrow the gaps between those achieving the poorest outcomes and their peers, and thereby reduce inequality.
30. **Section 3** also requires local authorities to encourage the involvement of parents and prospective parents, providers of early years provision in the private and voluntary sectors and any others who contribute to the well-being of young children, when developing integrated services and deciding how they should be delivered. Local authorities must, in addition, have regard to available information about the views of young children where this information appears relevant to the development or delivery of integrated services.
31. In carrying out their duties under section 3, local authorities must have regard to statutory guidance issued by the Secretary of State.

Section 4: Duty of local authority and relevant partners to work together

32. **Section 4** creates a reciprocal duty between the local authority and relevant partners in the NHS and Jobcentre Plus to work together in delivering integrated early childhood services to improve outcomes and reduce inequalities in achievement.
33. In order to deliver an integrated service for children and parents, the local authority and its partners must work with each other and may share their resources and pool budgets, allowing them to deliver fully integrated front-line services, for example where early years provision, social services support, health services and the employment service may all be found on one site. Local authorities and their health partners must have regard to statutory guidance issued by the Secretary of State. Jobcentre Plus officials (who work on behalf of the Secretary of State for the Department of Work and Pensions) will also be required by the Secretary of State to work in line with the guidance. It is intended that the statutory guidance will be issued jointly by all three Secretaries of State (DfES, DWP and DH).

34. This duty is consistent with section 10 of the Children Act 2004 under which children's trust arrangements have been made. The duty in section 4 puts the authority and their local partners in the NHS and Jobcentre Plus under a particular obligation to work together in improving outcomes for the youngest children in the local area. Guidance will set out how this co-operation can operate through the Government's preferred delivery model of children's centres.

Section 5: Power to amend sections 2 to 4

35. This section allows the Secretary of State to alter, by order, the definition of "early childhood services" and make any consequential changes to sections 2 or 4. This would, for example, enable other services to be included in the future. Such an order would be subject to the affirmative resolution procedure to ensure appropriate Parliamentary scrutiny (see section 105).

Sections 6-13: overview

36. **Sections 6 to 13** all relate to the provision of childcare, creating new and replacing existing statutory duties. Section 6 places a duty on local authorities in England to secure, so far as is reasonably practicable, sufficient childcare (including early years provision) for working parents in their area and parents making the transition to work. The other sections deal with a range of matters relating to the assessment and provision of childcare and the provision of information. Although the other sections are not limited to childcare for working parents, they confer powers and duties which are relevant to the discharge by local authorities of the duty imposed by section 6.
37. The intention is to bring section 11 (which relates to assessment of childcare provision) into force before the other sections in this group, so that local authorities would first have to assess the current state of childcare in their area, identifying any gaps in provision where parents' needs are not being met. Once the assessment has been undertaken, authorities would then consider what action they might need to take (using the provisions in sections 8, 9, 10 and 13) to fulfil the sufficiency duty in section 6. Section 8 gives local authorities powers to give assistance to childcare providers (including financial support) and to provide childcare themselves, subject to restrictions. Section 9 allows authorities to place conditions on any financial agreements they may make with childcare providers and to require repayment if providers fail to meet the conditions. Section 13, which replaces an existing duty, requires local authorities to provide information, advice and training to registered and school-based childcare providers, allows them also to do so for other providers, and permits them to make reasonable charges for this support.
38. **Section 7** requires local authorities to secure free early years provision for young children within a particular age group. This replaces an existing duty.
39. The final part of the "childcare" package is section 12 which develops an existing duty by requiring local authorities to provide parents and prospective parents with information about childcare and other services for children and young people. In respect of childcare, they must go further and also provide advice and assistance to help parents find childcare that meets their particular needs.

Section 6: Duty to secure sufficient childcare for working parents

40. **Section 6** places a duty on local authorities in England to secure, as far as is reasonably practicable, sufficient childcare to meet the requirements of parents in their area who require childcare in order to work or to undertake training or education to prepare for work. This applies to childcare for disabled children until they reach 18 and to childcare for other children until the 1st September after their 14th birthday.
41. The duty applies "so far as is reasonably practicable". This recognises that it may not be practicable for a local authority to secure childcare to meet the requirements of every

parent in their area. In determining what is reasonably practicable, local authorities will need to take into account a number of factors, including the resources available to them. In discharging the duty, local authorities must have regard to guidance issued by the Secretary of State.

42. **Section 6** provides that, in determining whether the provision of childcare is sufficient, local authorities must have regard to the needs of parents in their area for childcare eligible for the childcare element of the Working Tax Credit, and for childcare that is suitable for disabled children. Local authorities may also have regard to childcare outside their area when determining sufficiency. Section 6(4) enables the Secretary of State to amend, by order, the criteria to which local authorities must, or may, have regard in determining sufficiency and to make consequential amendments.

Section 7: Duty to secure prescribed early years provision free of charge

43. **Section 7** replaces for English local authorities the duty to secure sufficient nursery education contained in section 118 of the School Standards and Framework Act 1998.
44. **Section 7(1)** places a duty on local authorities to ensure that certain early years provision is available free of charge for each young child in their area who has attained a prescribed age but is under compulsory school age. The section allows the Secretary of State to prescribe in regulations the type and amount of early years provision.
45. **Section 7(2)** requires a local authority to have regard to guidance issued by the Secretary of State when discharging their duty.

Section 8: Powers of local authority in relation to the provision of childcare

46. **Section 8** provides that a local authority may make arrangements with childcare providers and provide support to them (including financial support). The section also allows local authorities to provide childcare themselves if there is no other provider willing to provide it or if the local authority considers, in all the circumstances, that it is appropriate to do so. *Subsection (4)* clarifies that this restriction does not affect the provision made by governing bodies of maintained schools (e.g. under their powers to provide community facilities under section 27 of the Education Act 2002). *Subsection (5)* provides that the restriction does not apply to provision made by the local authority for children in need under section 18(1) or (5) of the Children Act 1989.
47. In exercising any of the powers conferred by this section, local authorities must have regard to guidance issued by the Secretary of State.

Section 9: Arrangements between local authority and childcare providers

48. **Section 9** requires local authorities to exercise their powers to ensure that any providers with whom they enter into a financial agreement in relation to childcare provision meet requirements imposed on them. It allows local authorities to require repayment of financial assistance if providers fail to meet the contractual conditions.

Section 10: Charges where local authority provide childcare

49. **Section 10** provides that local authorities may enter into agreements which impose a charge for the provision of childcare by the authority. This does not apply where care is provided for children in need under section 18(1) or (5) of the Children Act 1989 as provision for charging in these circumstances is made by that Act.

Section 11: Duty to assess childcare provision

50. **Section 11** places a duty on local authorities to assess, at least every 3 years, whether childcare provision in their area is sufficient, and to keep assessments under review. The section enables the Secretary of State to make regulations concerning the nature and the form of the assessment, whether and how it is published and which people must

be consulted. Local authorities are also required to have regard to guidance issued by the Secretary of State in carrying out their assessment and review functions under this section.

Section 12: Duty to provide information, advice and assistance

51. **Section 12** places a duty on local authorities to establish and maintain a service providing information, advice and assistance in accordance with the section. It requires local authorities to provide parents and prospective parents with prescribed information on the provision of childcare and on other services or facilities, or publications, that may benefit them or children or young people. The details of the information which must be provided will be dealt with in regulations.
52. *Subsection (3)* requires the Secretary of State, when prescribing in regulations the information which must be provided, to have regard to the needs of the parents of disabled children and young people for particular information, for example, information relating to the provision of childcare which is suitable for disabled children. *Subsection (4)* allows local authorities to provide additional information to parents and prospective parents and to provide information to other persons.
53. **Section 12** also requires local authorities to provide advice and assistance to parents or prospective parents using or seeking childcare, and it requires them to ensure that the service is accessible to those who might benefit from it, in particular parents who might otherwise have difficulty accessing it.
54. When carrying out their functions under the section local authorities must have regard to guidance issued by the Secretary of State.

Section 13: Duty to provide information, advice and training to childcare providers

55. **Section 13** replaces (for England) the duty on local authorities under section 79V of the Children Act 1989 which requires local authorities to provide information and advice on day care and childminding. Under *subsection (1)* of section 13, local authorities are placed under a duty to provide information, advice and training to childcare providers who are registered under the new system, persons who provide childcare in certain schools (whether registered or not) and those who assist in the provision of registered care or care in schools or who intend to provide such care. Local authorities must discharge this duty in accordance with regulations.
56. The section also gives local authorities power to provide other information, advice and training to such providers and to provide information, advice and training to other persons who do not fall within the categories specified in subsection (1) but who provide or intend to provide childcare.
57. Local authorities are able to levy reasonable charges for providing support under this section. In carrying out their functions under the section, local authorities must have regard to any guidance issued by the Secretary of State.

Sections 14 and 15: Inspection and powers of Secretary of State to secure proper performance etc.

58. **Sections 14 and 15** ensure that a local authority's functions under Part 1 (to improve outcomes, to secure sufficient childcare and to provide information) are subject to inspection by Her Majesty's Chief Inspector of Schools and subject to the powers of the Secretary of State to secure proper performance through sections 496, 497, 497A, 497AA and 497B of the Education Act 1996.

Section 16: Amendments of Children Act 2004

59. **Section 16** makes two amendments to the Children Act 2004.

*These notes refer to the Childcare Act 2006 (c.21)
which received Royal Assent on 11 July 2006*

60. The first deals with accountability in relation to functions under Part 1 of the Act. It amends section 18 of the 2004 Act, which provides for the appointment by English local authorities of a director of children's services for the purpose of functions specified in that section. The amendment adds functions under Part 1 of the Act to the list of specified functions and thereby brings them within the responsibility of the director of children's services. The amendment also brings functions under Part 1 of the Act within the remit of the lead member for children's services designated by the local authority under section 19 of the 2004 Act.
61. The second amendment means that functions of English local authorities under Part 1 of the Act are children's services for the purposes of sections 20 to 22 of the 2004 Act. This means that they may be subject to a joint area review under section 20 of the 2004 Act.

Section 17: Charges for early years provision at maintained school

62. **Section 17** amends section 451 of the Education Act 1996 which prohibits charges for the provision of education for registered pupils at maintained schools. The changes allow for regulations to prescribe circumstances where the prohibition on charging for education does not apply in respect of early years provision. The regulations may not lift the prohibition in respect of children of compulsory school age or in respect of provision that is secured under section 7 (which deals with the duty to secure free early years provision).

Sections 18 to 21: Meaning of childcare and other terms

63. **Section 18** defines childcare as any form of care for a child including education and any supervised activity but excluding education (or any other supervised activity) provided in school hours for a registered pupil at a school who is not a young child. The definition also excludes health care, care provided by certain individuals (for example, a parent or a relative of a child), care provided in a hospital, care home or family centre and care provided for children detained in young offender institutions or secure training centres.
64. **Sections 19 and 20** define young child and early years provision. Early years provision is the provision of childcare for a young child and a child is regarded as a young child until the 1st September following the date on which he attains the age of 5.