

EXPLANATORY MEMORANDUM TO
THE CHILDCARE ACT 2006 (CHILDCARE ASSESSMENTS) REGULATIONS
2007 No. 463

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The Regulations set out the statutory framework to local authorities for the completion of an assessment of the sufficiency of childcare.
3. **Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 Section 11 of the Childcare Act 2006 (“the 2006 Act”) places a duty on English local authorities (defined in section 106 of that Act) to prepare an assessment of the sufficiency of childcare provision in their area within one year of the section coming into force. Section 11(5) confers powers on the Secretary of State to make regulations concerning the content, criteria for preparation, form and manner of publication of the assessment. Section 11(6) enables the Secretary of State to prescribe the persons an English local authority (“an authority”) must consult in preparing their assessment.
 - 4.2 The section 11 duty replaces the duty on local education authorities to review the sufficiency of childcare provision in their area on an annual basis under section 118A of the School Standards and Framework Act 1998 (amended by the Education Act 2002). The 2006 Act repeals the 1998 Act duty.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England.
6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**
 - 7.1 The Childcare Act 2006 gives English local authorities a key role in shaping the childcare market in their area. They will, working with providers from the private, voluntary, independent and maintained sectors, look to shape and support a strong, sustainable and diverse childcare market that meets the needs of parents.

7.2 From April 2007, authorities will be required to undertake a detailed assessment of the supply of, and demand for, childcare in their area. Authorities will need to consult with parents, employers, community groups and providers of childcare (amongst others) and undertake a detailed analysis of local demographics. They will then produce an analysis identifying where childcare supply does not match the needs of families and communities. The assessment will provide authorities with the key evidence they will need to develop their strategies for meeting the new duty to secure sufficient childcare (section 6 of the Act) which will come into force in April 2008.

7.3 The DfES has undertaken a formal consultation on the section 11 duty regulations and guidance. (See paragraph 10 of the attached Regulatory Impact Assessment.) There was strong support for the policy and agreement that the sufficiency assessment will be important in enabling local authorities to take a strategic role in the development of sustainable, flexible and accessible childcare.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 These regulations will not place an additional burden on local authorities:

8.2.1 Section 11 of the 2006 Act and these regulations effectively replace the duty to assess the sufficiency of childcare on an annual basis under section 118A of the School Standards and Framework Act 1998 (amended by the Education Act 2002). Childcare assessments under the 2006 Act are only required to be prepared every three years, though they must be kept under review in the intervening period.

8.2.2 The funding available within the General Sure Start Grant (which is made to authorities to assist them with their work in supporting the Government's ten year strategy for childcare) is sufficient to cover the costs to authorities of carrying out childcare assessments.

9. Contact

Jerry O'Connell at the Department for Education and Skills Tel: 020 7273 5408 or e-mail: jerry.o'connell@dfes.gov.uk can answer any queries regarding the instrument.

Regulatory Impact Assessment for The Childcare Act 2006 (Childcare Assessment) Regulations 2007

Purpose and Intended Effect

Objective

1. The objective is to ensure that local authorities assess the supply, parents' use of, and demand for, childcare in their area. Through this assessment, local authorities will be able to identify gaps in childcare provision where parents' needs are not being met. The results of the childcare sufficiency assessment will also feed into the Children and Young People's Plans. Local authorities will be required to undertake a childcare sufficiency assessment within a year of the commencement of the legislation, and then at least every three years after that, keeping it under review in between main assessments.

Background

2. Local authorities have had a growing strategic role in planning, commissioning and delivering services for young children and their families, including facilitation and management of their local childcare market. The significant increase in services has been driven through hypothecated grant funding and targets. This approach was appropriate in the early phases of service development, but the remaining challenges require greater flexibility and scope for locally determined action.

3. At present, local authorities play a big part in securing childcare provision through Sure Start Local Programmes, children's centres, the free early education entitlement and extended schools but there is no requirement on central or local government to ensure that there is sufficient provision. The childcare sector as a whole (including private, voluntary and independent sector providers) has grown considerably in recent years. There will, however, always be areas where local action is required to respond to changing needs.

4. The new duties in the Childcare Act 2006 require local authorities to shape and support the development of childcare provision in their local area in order to make it flexible, sustainable and responsive to the needs of the community. The overall aim is that parents will be able to find childcare locally that meets their needs and enables them to make a real choice about work.

5. Section 11 of the Childcare Act 2006 allows for regulations to be put in place to ensure that local authorities conduct a comprehensive assessment of the need for, and supply of, childcare so they can sustain this enhanced provision for childcare and early years services and ensure that its continued development reflects local needs and circumstances.

Rationale for Government Intervention

6. In order to meet their duty to secure sufficient childcare (contained in Section 6 of the Childcare Act 2006) local authorities will need to have a good understanding of how the childcare market operates in their area. They will need robust evidence upon which to plan their strategy for meeting the sufficiency duty and confidence that they are meeting the needs of their communities.

7. Local authorities already have a duty to review the sufficiency of childcare under section

118A of the School Standards and Framework Act 1998. However, its impact has been uneven and has been affected by the lack of a comprehensive and coherent legal framework for the provision of childcare. At present local authority reviews of childcare focus mainly on the supply of childcare and not on demand. The Section 11 regulations and guidance will emphasise the importance of assessing both demand and supply and comparing the results of these to identify gaps.

8. The regulations and guidance will provide local authorities with a comprehensive framework for the assessment. They will also be supported by best practice guidance which has been developed through the Childcare Implementation Project. This involved 12 local authorities and is being used to identify best practice and develop materials to help all 150 local authorities to undertake their new duties under the Childcare Act. The Section 11 guidance will signpost local authorities to a website with a range of tools and resources. The regulations stipulate that local authorities should publish specific data and analysis, which will show how well they are achieving the Section 6 duty to secure sufficient childcare.

Consultation

Within Government

9. The Government has consulted and shared its early thinking with 10 Year Strategy partners including HM Treasury, the Department for Work and Pensions, and the Department for Communities and Local Government. The Government has also consulted with the Office for Standards in Education, in its role as the regulator of childcare. Previously, the Government consulted on the Childcare Bill, containing the duty to assess the sufficiency of childcare (Section 11), including a Regulatory Impact Assessment for the Bill as a whole.

Public consultation

10. A formal consultation on the regulations and guidance for Section 11 duties took place from 14 August to 6 November 2006. Written responses were received from a broad range of stakeholders including local authorities, government offices, childcare providers, sector representative bodies, charities and trade unions. The Section 11 regulations and guidance were refined in the light of the consultation responses.

Options

11. The duty on local authorities to assess childcare provision is contained in Section 11 of the Childcare Act 2006. The regulations and related statutory guidance made under Section 11 are necessary to provide information on how the duty is to be fulfilled.

12. The Government has not produced an estimate of the monetary value of the benefits of the implementation of the Section 11 regulations as part of this Regulatory Impact Assessment. The function of the Section 11 duty is to require local authorities to analyse the supply of, and demand for, childcare and identify where there are gaps in the sufficiency of childcare. They will then use this evidence (through the powers related to the Section 6 duty) to plan the actions they will need to take to secure sufficient childcare. This in turn will have major benefits by enabling many more parents to access childcare and move into work. The benefits of the Section 11 policy result from the implementation of the Section 6 duty, not from the Section 11 duty itself.

13. The guidance for Sections 6 – 10 and 13 of the Childcare Act 2006 (which contain a range of duties and powers relating to the childcare sufficiency duty) and regulations for Section

13 are currently being consulted upon. The Government has completed a full analysis of the costs and benefits of the two groups of guidance and legislation, the results of which are included within the Regulatory Impact Assessment that forms part of the consultation.

Costs and Benefits

Sectors and groups affected

14. 150 top tier local authorities in England; over 130,000 private, voluntary and maintained sector childcare providers (affected indirectly) in England, ranging from individual carers and sole traders to large chains; and 11.7 million children and their families in England.

Benefits

15. The duty to assess the sufficiency of childcare (Section 11) and the interlinked duty to secure sufficient childcare (Section 6) will require every local authority to take action to ensure that there is sufficient childcare provision available for children aged 0-14 (18 for disabled children) within its area. The Section 11 Regulations will set the framework for how local authorities will deliver the Section 11 duty.

16. The Section 11 regulations will ensure that local authorities put in place appropriate mechanisms to assess the supply of, and demand for, childcare and identify any unmet needs. Local authorities will have to assess in detail the nature and features of the childcare market, analysing the views of parents, children, childcare providers, employers and the community. The assessment will also incorporate data on the labour market, deprivation and the local economy and show a realistic picture of the present supply of childcare.

17. Local authorities will use the information gained through the assessment to identify where there are gaps in the market, and plan and work with their partners, private and voluntary childcare providers and schools, to provide advice, support and targeted incentives to help providers fill them. They will shape and support the overall provision of childcare to make it flexible, sustainable and responsive to the needs of parents and the community. More broadly, this will enable more parents, especially mothers, to enter the labour market, resulting in increases in family income and a reduction in the number of children living in workless households.

18. The regulations draw together on a more formal basis activities that many local authorities already undertake as part of Sure Start children's centres and extended schools programmes, as well as activities undertaken as part of existing statutory duties (for example, the Section 118A duty to review sufficiency). Local authorities receive funding through the General Sure Start Grant for these activities. Most of the funding for childcare itself comes from parents, either directly or through the childcare element of the Working Tax Credit. As a legislative function this role will be subject to children and young people's local planning requirements and integrated inspection procedures under the Children Act 2004.

19. All Sure Start funding will be routed through local authorities by 2008, making them even more a key player in the childcare market. In addition, local authorities already have the expertise and local knowledge that is necessary to shape the market to secure sufficient childcare, and they are also best placed to assess local need for, and stimulate local provision of, childcare. Given this, placing a statutory duty to assess the sufficiency of childcare and then secure sufficiency will focus this expertise so that appropriate systems are put in place to ensure that sufficient childcare is available in each locality and that this childcare is suitable and reflects local needs and circumstances.

20. The regulations will complement local authorities' existing duties in relation to nursery education. They will enable the Government to fulfil its goal of making sufficient childcare available to all families with children aged 0-14 (18 for disabled children).

21. The Section 11 regulations will not have a direct effect on private and voluntary childcare providers other than the need to provide information if they are asked to participate in surveys, focus groups or consultation events, all of which will be voluntary.

Costs

22. The Government is committed to ensuring that the duties under the Childcare Act 2006 do not place new, unfunded burdens on local authorities. The key aim of the regulations and guidance under the Act is that they should provide assurance of a long-term commitment to early years services and childcare, without creating new administrative burdens or service costs for local authorities. The Section 11 regulations will be financed within the additional resources that have already been made available for childcare and early years services and future funding levels, which will be determined through the normal spending review mechanisms. They are, therefore, cost neutral, formalising and placing on a long term and sustainable basis the role that local authorities are already playing.

23. Following the consultation the Government has refined its estimate of the costs involved in this duty. The Government estimates that the cost of conducting an assessment for Local Authorities will be around £20,000 to £30,000.

24. The existing regulations to review the sufficiency of childcare (see paragraph 7 above) require that an assessment is undertaken every year. The new Section 11 regulations require that assessments are done at intervals no greater than every three years. This will further offset any additional cost resulting from the enhanced scope of the assessment process and in particular that of consulting and publishing the assessment. Following comments received during the formal consultation, the Government has also taken steps to reduce any potential burdens on local authorities by making the regulations less prescriptive about the way in which local authorities should seek comments on their draft assessment documents.

25. The Government's funding of childcare and early years services is significantly expanding. Funding rises to £1.8 billion in 2007-08, around double the 2004-05 outturn figure of £928m¹. From 2006-07 local authorities have had a greater degree of flexibility in the use of funding. For example, the number of ring-fenced budgets within the GSSG in 2004-06 was reduced to five for 2006-08 (Main Revenue (MR-GSSG), Main Capital (MC-GSSG), Transformation Fund, Sure Start Local Programme (SSLP) funding and Two Year Old Pilot funding).

26. Local authorities were informed of their GSSG funding for 2006-08 in December 2005 - including three allocation streams which had already been announced. (Capital and revenue for children's centres, Extended Schools and Sure Start Local Programmes.)² Children's Centres and Extended Schools funding comes out of the MR-GSSG and MC-GSSG and therefore the remaining MR-GSSG is includes funding for local authorities to spend on meeting the assessment duty. In 2007-08 £236m revenue funding is available within the GSSG which can be spent flexibly, including on the costs of Childcare Sufficiency Assessments. Given the level of funding and the increase in flexibility around how local authorities can spend this money, local authorities should be confident that the necessary resources are available to meet the costs of the

¹ Source DfES Departmental Report 2006 Cm 6812

² The funding level of SSLPs for 2006-7 has been announced.

duties.

Small Firms Impact Test

27. The majority of childcare is provided by small voluntary and private sector providers, with a few large firms having a relatively small share of the market. The new duties may have beneficial effects on small businesses. Local authorities will have an improved understanding of the childcare market and will be able to target support more effectively and provide a strategic overview. Local authorities are required in the Section 11 regulations and guidance to work proactively with childcare providers during the preparation of the assessment and to consult with them prior to its publication.

28. Childcare providers are also likely to find that, as a result of the new duties to assess and secure the sufficiency of childcare and to secure the provision of information, advice and training, local authorities are better able to provide targeted support to help achieve greater flexibility, sustainability and affordability in the childcare market.

29. Small childcare providers are likely to benefit from better information about childcare and children's services as more families become aware of the services that they provide.

30. The Small Business Service at the Department of Trade and Industry was consulted as part of the development of the Childcare Bill RIA – New Duties on Local Authorities, and agreed with the assessment that the duties are likely to have a positive impact on small businesses.

Competition Assessment

31. Consideration has been given to the potential impact of these provisions on competition. It is not envisaged that the number or size of firms would change significantly as a result of any of the new duties.

Enforcement, Sanctions and Monitoring

32. How well the local authority fulfils the duty will be covered by the existing planning, inspection, assessment and intervention arrangements: Annual Performance Assessments, Joint Area Reviews and Comprehensive Performance Assessments and will be integrated within each authority's children's trusts arrangements. This will be backed by the ultimate sanction of the powers of the Secretary of State for Education and Skills to intervene.

Implementation and Delivery Plan

33. The Childcare Sufficiency Assessments duty will be implemented by local authorities. The regulations will come into force in April 2007. The Guidance was published in February 2007. Best practice materials are being placed on the Department for Education and Skill's Every Child Matters website to support local authorities in carrying out their assessment.

Post-Implementation Review

34. Although there is no statutory basis for reviewing implementation of the Childcare Sufficiency Assessments duty the Government will seek to review its implementation on a continued basis in order to assess the extent to which the original aims and objectives have been

successfully met. Reviewing and monitoring will be integrated with the Every Child Matters improvement cycle – i.e. local authority performance assessments (Annual Performance Assessments and Comprehensive Performance Assessments), integrated inspections through Joint Area Reviews and progress towards wider Government commitments, and evidence from Directors of Children and Learners. The Government will take account of the changes that may result from the recent Department for Communities and Learning White Paper *Strong and Prosperous Communities*.

35. The Department for Education and Skills will continue to work with key partners including other government departments, local authorities and organisations representing childcare providers in monitoring the effectiveness of the duties and their implementation and will seek to identify any unintended consequences of the legislation. When necessary the Department for Education and Skills will work with these partners to amend and update guidance for local authorities on implementing the duty.

Summary and Recommendation

36. The Government recommends the proposed regulations for meeting the requirements set out in the Childcare Act 2006.

Declaration and Recommendation

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed ...*Beverley Hughes*.....

Date*19th February 2007*.....

Beverley Hughes, Minister for Children, Young People and Families, Department for Education and Skills

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