

CHILDREN AND FAMILIES (WALES) MEASURE 2010

EXPLANATORY NOTES

Part 1: Child Poverty, Play and Participation

3. Part 1 of the Measure makes provision about contributing to the eradication of child poverty, places a duty on local authorities to secure sufficient play opportunities for children and makes provision about arrangements for the participation of children in local authority decisions that might affect them.

Part 1, Chapter 1: Eradicating Child Poverty

Section 1: Broad aims for contributing to the eradication of child poverty

4. This section sets a range of broad aims which, if pursued, are likely to contribute to the eradication of child poverty. These broad aims apply for the purposes of further provision made under Part 1. The aims are specified in paragraphs (a) to (m) of subsections (2) and they include aims which relate to household income, material deprivation and social factors relevant to the causes of child poverty. The main purpose of this list of aims is to set the field from which specified public authorities in Wales (see section 6) must choose objectives for inclusion in their child poverty strategies (see section 2).
5. Subsection (8) makes provision for the broad aims to be amended by order of the Welsh Ministers. Orders under this subsection are subject to an affirmative resolution procedure in the Assembly before they are made, which means that they must be approved by the Assembly before they are made (see section 74(5)).
6. Subsections (3) and (4) specify that the “relevant income groups” referred to in the aims in subsections (2)(a) and (b) are income groups defined by reference to the UK median household income. The broad aim in subsection (2)(a) is that there should be no household with children where the household income is less than 60 per cent of the median household income in the United Kingdom. The broad aim of subsection (2)(b) is that no children living in households where income is less than 70 per cent of the UK median household income should be “materially deprived”.
7. Welsh Ministers may make regulations to say how median income and material deprivation are determined for these purposes.
8. Subsection (6) makes provision in the event that the duty on Welsh authorities to prepare a strategy comes into force before any regulations are made under subsection (5). In that event, Welsh authorities must take their own view on what the material deprivation and median-related indicators mean.

Section 2: Strategies for contributing to the eradication of child poverty

9. Section 2 imposes a duty on “Welsh authorities” to prepare and publish a strategy for contributing to the eradication of child poverty in Wales. The strategy should set out

objectives chosen by the authority which relate to the broad aims which are relevant to, and which can be pursued in, the exercise of its functions. The strategy must also contain the actions to be performed and functions to be exercised by the authority for the purpose of achieving its objectives. In the case of the Welsh Ministers and local authorities, they must choose objectives which relate to each of the broad aims.

10. Subsection (4) provides that Welsh Ministers must, in preparing their strategy, choose objectives which relate to their powers to provide funding to any person.
11. Subsection (5) gives the Welsh Ministers a power to make regulations to specify particular objectives for a Welsh authority over and above any objectives which the Welsh authority might choose for itself.
12. The list of Welsh authorities which are subject to the duty to prepare and publish a strategy is set out in section 6.
13. Provision about the preparation and publication of strategies are set out in sections 3 to 5 of the Measure and section 26 of the Children Act 2004 (“the 2004 Act”) (as amended by section 4 of the Measure).

Section 3: Strategies prepared by the Welsh Ministers

14. **Section 3** sets out provision about the making, publication and review of strategies under Part 1 of the Measure that are prepared by the Welsh Ministers.
15. Subsection (1) provides that the Welsh Ministers must publish their first strategy under the Measure in 2010; it requires them to keep their strategy under review and empowers them to remake or revise it from time to time.
16. The Welsh Ministers must consult the Secretary of State and such other persons as they consider appropriate before making, remaking or revising their strategy (subsection (2)).
17. Subsection (4) requires that the strategy (new or revised) is published and subsection (5) requires that any new or revised strategy must be laid before the Assembly. Following revision, the Welsh Ministers may either publish a document setting out the revisions or publish the strategy with the revisions incorporated.
18. Subsection (6) requires that the Welsh Ministers publish a report in 2013 and in every third year subsequently, containing an assessment of the extent to which objectives have been met and if objectives have not been met, progress that has been made towards meeting them. Reports must be laid before the Assembly.

Section 4: Strategies prepared by local authorities (children’s service authorities)

19. **Section 4** makes amendments to section 26 of the 2004 Act so that, for a local authority, the duty to have a child poverty strategy is linked to the existing duty under that section to prepare a plan saying how, more broadly, it will discharge its functions in relation to children and young persons. Subsection (1) provides that a local authority’s duty to publish a strategy is discharged by the publication of a plan under section 26 of the 2004 Act. The existing duty is amended by subsection (3) so that a local authority must include in its plan its strategy for contributing to the eradication of child poverty in Wales under section 2(1) of the Measure.
20. As well as their own child poverty strategy, a local authority may also include the child poverty strategies of other Welsh authorities with whom it has made an arrangement under section 25 of the 2004 Act. In this regard, see also section 5(4) and 5(5) which make provision that if another Welsh authority’s child poverty strategy is incorporated into the local authority’s plan under the 2004 Act, then its duty under section 2 of the Measure is discharged.

Section 5: Strategies prepared by other Welsh authorities

21. **Section 5** makes provision about the strategies to be prepared by Welsh authorities other than the Welsh Ministers and local authorities. The Welsh Ministers may make regulations about the making, publication and review of their strategies and consultation on their strategies (subsection (3)).
22. Section 25 of the 2004 Act places a duty on a local authority to make arrangements to promote co-operation between the authority and its “relevant partners”, who are specified in subsection (4) of that section. Two of these partners are also Welsh authorities for the purpose of Part 1 of the Measure. They are a local health board and the Public Health Wales National Health Service Trust (if it is providing services in the area of the authority). These Welsh authorities can discharge their duty under section 2 of the Measure by having the strategy included as an integral part of the plans of each local authority with whom they enter into arrangements under the 2004 Act, rather than preparing and publishing a separate plan of their own (subsections (4) and (5)). A Welsh authority which exercises functions in relation to more than one local authority area will only discharge its duty to prepare and publish a strategy by having its strategy incorporated into each of the plans of the local authorities in question.

Section 6: The Welsh authorities

23. **Section 6** sets out which Welsh authorities are subject to the duty under Section 2 of the Measure. Subsection (2) allows for the list to be amended by order of the Welsh Ministers. Such an order would need to be approved by the Assembly before being made (see section 74(5)) and any person the Welsh Ministers intend to add must be consulted before being added to the list (subsection (3)).
24. Subsection (4) makes it clear that the only persons who can be included on the list are persons having functions of a public nature whose principal functions relate to one or more of the fields in Part 1 of Schedule 5 to the Government of Wales Act 2006. Tribunals which fall within this category are excluded.
25. Any person added to the list who has functions of both a public and a private nature may only be included in the list in relation to those of its functions which are of a public nature (subsection (5)).

Section 7: Local authority duty to secure the availability of free childcare

26. Subsection (1) places a duty on local authorities to secure free childcare places for certain children who are not of compulsory school age. The operation of this section depends upon further provision to be made in regulations by the Welsh Ministers about—
 - the type of childcare that must be provided,
 - the periods for which it is to be available,
 - the description of the child for whom the care is to be made available (including the age they must have attained).
27. In subsection (3) ‘childcare’ is defined as being either child minding or day care, of a sort which must be registered with the Welsh Ministers¹ under Part 2 of this Measure or care which is approved in accordance with a tax credits scheme made by Welsh Ministers.

¹ The functions of the Welsh Ministers in respect of the registration and inspection of child minding and day care are discharged by the Care and Social Services Inspectorate for Wales.

Section 8: Parental support services: powers of a local authority

28. Subsection (1) gives local authorities a power to provide, secure or participate in the provision of parental support services. These services are defined in subsection (3) as training in parenting skills or any other service to promote or facilitate effective parenting. Authorities will be able to provide these services directly themselves, commission them from others or collaborate with others in the provision of them.
29. Subsection (2) requires that such parental support services as are provided by local authorities using their powers under subsection (1) must be provided free of charge.

Section 9: Health support services: powers of a local authority

30. Subsection (1) gives local authorities a power to provide, secure or participate in the provision of health support services. These services are defined in subsection (4) as services providing assistance in relation to the health of children or parents of children. But in the case of services to parents of children it is a condition of the exercise of the power that the assistance is necessary to secure the well-being of the children of those parents. Health support services under this section do not include the provision of medical, dental, ophthalmic or pharmaceutical services.
31. As with parental support services, authorities can either provide the services directly themselves, commission them from others or collaborate with others in the provision of them.
32. Subsection (2) requires that when exercising their powers under subsection (1) to provide, secure or participate in the provision of nursing services, local authorities must have the agreement of the relevant local health board.
33. Subsection (3) requires that health support and preventative services provided by local authorities using their powers under subsection (1) must be provided free of charge.

Section 10: Regulations about services to tackle child poverty

Section 10 does two main things.

34. First, it empowers the Welsh Ministers by regulations to require local authorities to secure, free of charge, the provision of parental support services or health support services of the kind described in sections 8 and 9 respectively (paragraphs (a) and (b) of subsection (1)). Such regulations may also specify—
 - the description of service that must be provided by the authority, and
 - the description of children and parents to whom the duty will apply.
35. Secondly, it empowers the Welsh Ministers to apply the duty to secure the provision of childcare under section 7(1) and any duty in regulations under this section to secure the provision of parental support services or health support services in only one or more parts of a local authority area (paragraphs (c) and (d) of subsection (1)).
36. Subsection (2) provides that where the Welsh Ministers specify that services are required to be provided by reference to an area, the area or areas may either be specified in the regulations or the regulations could require the local authority itself to specify one or more areas.

Part 1, Chapter 2: Play and Participation

Section 11: Local authority duties in respect of play opportunities for children

37. Subsection (1) provides that a local authority must carry out an assessment of sufficiency of play opportunities in its area in accordance with regulations made by

Welsh Ministers. This is a preliminary step in the performance of the duty set out in subsection (3).

38. Regulations may specify particular matters to be taken into account in assessing sufficiency, the date by which such a sufficiency assessment is to be undertaken, the frequency of assessment, when the assessment is to be published and when and how it should be reviewed.
39. Subsection (3) places a duty on a local authority to secure sufficient play opportunities in its area for children as far as reasonably practicable having regard to its assessment. Local authorities will have to have regard to any guidance issued by the Welsh Ministers under section 17(3) of the Measure.
40. Subsection (4) requires local authorities to publish information about play opportunities in their area and to keep this information up to date.
41. Subsection (5) provides that in securing sufficiency of play opportunities, a local authority should consider in particular the needs of disabled children, the needs of children of different ages and any guidance issued by Welsh Ministers.
42. Subsection (6) clarifies that play includes any recreational activity and that the reference to “sufficiency” in the duty at subsection (1) relates to the quantity and quality of play opportunities.

Section 12: Participation of children in local authority decision making

43. **Section 12** requires local authorities to make arrangements to promote and facilitate participation by children in decisions across the full range of authorities’ functions which affect them. “Children” for these purposes are defined in section 71 as persons below the age of 18.
44. Subsection (2) requires local authorities to publish information about its arrangements for participation and to keep the information up to date.
45. Subsection (3) repeals section 176 of the Education Act 2002 as amended. Section 176 placed a duty on local authorities and governing bodies in Wales to have regard to the Welsh Ministers’ guidance about consultation with pupils in connection with the taking of decisions affecting them. The new duty places a duty to make arrangements to promote and facilitate participation by children in decisions of the authority which might affect them. The old duty is overtaken by the new duty except with regards to decisions which are for the governing body of maintained schools and not the local authority, which are now the subject of separate provision in section 29B of the Education Act 2002 (inserted by section 157 of the Education and Skills Act 2008).

Part 1, Chapter 3: Inspection, guidance and directions

Section 13: Inspection

46. **Section 13** gives the Welsh Ministers power by regulations to provide for local authorities’ performance of the functions conferred by section 7 to 12 to be inspected and for the publication of inspection reports. The regulations can provide that inspections will be organised either by the Welsh Ministers or by Estyn (which is the inspectorate of education and training headed by Her Majesty’s Chief Inspector of Education and Training in Wales) or any other person under arrangements made with the Welsh Ministers. The regulations may provide that inspection reports are “privileged” for the purposes of the law of defamation unless it can be shown that publication has been made with malice.

Section 14: Powers of entry

47. **Section 14** provides a power of entry at any reasonable time to any local authority premises or premises used in connection with the provision of services or facilities by another person under arrangements with a local authority in the performance of the relevant functions under this Part. This does not include the power to enter premises used wholly or mainly as a private dwelling.

Section 15: Powers of inspection

48. **Section 15** sets out the powers of inspection of those who enter premises for that purpose. It includes a power to seize and remove documents or anything else relevant to the discharge of the functions in question. It also includes power to require access to records or documents which may be stored on a computer. A person who obstructs an inspector exercising a power of entry or inspection, or who fails to comply with the requirement of an inspector, commits an offence, punishable on conviction in a magistrates' court with a fine not exceeding level 4 on the standard scale (currently £2,500).

Section 16: Power to require information

49. This section empowers the Welsh Ministers to require a local authority, or any person with whom the local authority has entered into arrangements in the exercise of the functions under sections 7 to 10, to provide them with relevant information, documents or records. The power extends to any information, documents or records which relate to the exercise of functions under sections 7 to 12 and which the Welsh Ministers consider necessary for the purposes of their functions under this Part. The power also applies where a person other than the Welsh Ministers is carrying out inspections as provided for by regulations made under section 13(2).

Section 17: Guidance

50. This section requires Welsh authorities to have regard to guidance issued by the Welsh Ministers when exercising their functions where the guidance is about the exercise of the specific functions under sections 1 to 10 or more generally about action to promote the broad aims for contributing to the eradication of child poverty.
51. Subsection (3) makes separate provision requiring a local authority to have regard to any guidance issued under this section in relation to its functions under sections 11 and 12.

Section 18: Directions

52. **Section 18** gives a power to Welsh Ministers to direct a Welsh authority to take action to secure compliance with the duties under sections 2, 7, 10, 11 or 12 where it is felt that the Welsh authority is failing or is likely to fail to comply with those duties.