

Evidence for the Children, Young People and Education Committee of the Welsh Assembly on the Welsh Government Childcare Funding (Wales) Bill

I am the Legislation lead in HMRC for 'Tax-Free Childcare' (TFC). I also acted as a technical adviser to the Department for Education (DfE) when they drafted their legislation for '30 Hours Free Childcare for Qualifying Children of Working Parents' (30 hours – a similar childcare scheme in England). HMRC provides eligibility checking for the DfE in England for their 30 hours offer. Parents apply through a single portal for both TFC and 30 hours.

I worked closely with Welsh policy officials and lawyers when they were drafting the legislation that the Welsh Assembly is now considering. The legislation will allow the Welsh Government to create a childcare scheme, similar to 30 hours, for Welsh parents. It also provides the vires necessary for HMRC to be able to deliver the eligibility checking on behalf of the Welsh Government.

I will address why the legislation is needed, the regulation making powers being sought and the use of those powers. I will not address anything linked to the funding of the scheme.

New legislation is needed for the following reasons.

- It creates certainty over who is entitled to support with childcare, and at what level, by allowing for detailed eligibility rules to be set out in regulations.
- It provides for clear penalties to protect the scheme from carelessness and abuse.
- It provides for parents to have clearly defined rights of review and appeal over scheme decisions.
- It provides for necessary data to be accessed so that eligibility decisions can be made quickly and accurately.

The legislation for 30 hours for Wales differs from the legislation underpinning 30 hours in England in that it does not give HMRC any 'functions' in administering the scheme. By 'functions' I mean powers and duties formally given to the Commissioners for Revenue and Customs as defined in section 51(2) of the Commissioners for Revenue and Customs Act 2005. This is because giving legal functions to HMRC would mean HM Treasury would need to provide consent for the eligibility regulations which will underpin the scheme.

Instead, assuming the Welsh Government choose HMRC to provide eligibility checking, HMRC can do this as agents of the Welsh Government. This is provided for under section 83 of Government of Wales Act 2006 and section 15(3) of Commissioners for Revenue and Customs Act 2005. The services likely to be wanted are the collecting of applications, the determination of whether they are valid, considering and issuing any necessary penalties to protect the scheme and defending any appealable decisions made.

However, HMRC not taking on formal functions means that the Welsh Government will need legal access to the data HMRC will use to determine eligibility in relation to the Welsh scheme. This is because the data gateways currently relied on by HMRC when supplying services to DfE in relation to 30 hours will not work when HMRC is acting as an agent. They depend on HMRC having formal functions. This applies even where HMRC uses data which it already possesses e.g. taxation information. The Bill provides for regulations creating the necessary data gateways. These regulations will be subject to consent from UK Government Ministers whose Departments provide information.

To enable HMRC to administer the scheme and provide flexibility in doing this in my view this Bill strikes a reasonable balance between the information set out on the face of the Bill and that which will be set out in regulations. This is particularly so because the Welsh Government can describe in reasonable detail what the scheme will look like when delivered.

The Bill seeks regulation making powers to

- set out detailed eligibility rules;
- allow those that abuse or fail to take reasonable care in using the scheme to be suitably penalised;
- create rights of review and appeal over decisions taken over eligibility or penalties; and
- create the necessary data gateways for the scheme to function.

In my view all of these things are necessary to create a clear, workable and fair scheme.

In using these powers the Welsh Ministers may want to consider bringing forward two or more separate sets of regulations. This is because the regulations creating data gateways need consent from UK ministers. Therefore, any eligibility regulations that are part of the gateway regulations would need consent from UK ministers.

Regulation making powers will also allow the introduction of statutory guidance for Welsh local authorities that such authorities are required to take into account in administering the scheme in their areas. This fits with the Welsh Government adopting a similar structure to that used in 30 hours, where HMRC determine whether parents are eligible and pass that information to local authorities that then pay childcare providers for the childcare. Statutory Guidance enables the relationship with local authorities to be established, formalised and published.