

Policy and research briefing: Children and Families Bill clause 76, Repeal of local authority's duty to assess sufficiency of childcare provision

Clause 76 would remove section 11 of the Childcare Act 2006, which sets out the statutory duty on local authorities in England to assess the sufficiency of childcare. Section 11 supports the section 6 Childcare Act duty on local authorities to provide sufficient childcare for working parents 'as far as reasonably practicable'. The government argues that the section 11 duty should be removed because it is excessively prescriptive and that statutory guidance will continue to require local authorities to report annually on childcare sufficiency.

At a glance:

- **There are significant gaps in access to high quality, affordable childcare that undermine child development and limit parental employment.**
 - **Clause 76 would render the Childcare Act 2006 duty on local authorities to provide sufficient childcare a 'toothless' duty.**
 - **The government should maintain but revise the section 11 duty to assess the sufficiency of childcare.**
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Summary:

- Clause 76 poses a significant risk to the effectiveness of the Childcare Act duty on local authorities to provide sufficient childcare for working parents. The Childcare Act was designed with a general sufficiency duty (section 6) supported by the specific definition and measures of sufficiency set out in section 11. Section 11 sufficiency assessments are in practice the mechanism through which local authorities meet and are held accountable against the section 6 sufficiency duty. Repealing section 11 and the associated regulations without an effective replacement will in many areas effectively revoke the Childcare Act sufficiency duty.
- The solution that addresses concerns about excessive prescription in the section 11 regulations is to maintain the section 11 duty itself but simplify or remove these regulations. Evidence shows that statutory guidance is not an effective alternative to a duty in primary legislation because it leads to a duty having a lower financial priority or not happening at all. Moreover, the government has reduced statutory guidance on the sufficiency duty from 70 pages to a single page, which removes important guidance on what sufficient childcare means and will almost certainly lead to lower quality assessments.

- There are substantial gaps in access to high quality, affordable childcare. For example, just one fifth of local authorities believe there is sufficient childcare in their area for under twos. In particular, there is a chronic shortage of high quality places in disadvantaged areas, for parents working atypical hours and for children with additional needs. These gaps undermine efforts to reduce educational inequalities and are a significant constraint on parental employment and poverty reduction strategies. An effective Childcare Act sufficiency duty therefore remains an important tool in social policy.
- Many sufficiency assessments do not calculate sufficiency in a robust or reliable way because every local authority is forced to ‘reinvent the wheel’ in solving research problems. Up to half of the most recent 2011 sufficiency assessments (based on London figures) lack required action plans and as a result were a passive and potentially ineffective exercise. The government’s intention to remove section 11 and drastically reduce guidance on the sufficiency duty will exacerbate these problems.
- The consultation on removing the section 11 duty did not show support for removing section 11 itself (rather than outdated regulations). Crucially, 60 local authorities explicitly requested in their responses more detailed guidance on sufficiency assessments than the government has prepared.
- Local authorities in England receive three to four billion pounds of early years funding annually. Public investment on this scale should be matched by a legislative framework to guide effective investment and ensure accountability.¹ Notably, the Care Bill currently before Parliament was introduced with a new sufficiency duty for adult social care modelled on the Childcare Act—including a duty in primary legislation to understand the supply and demand of services (see appendix C). It is difficult to explain removing the same duty in the early years.

The Childcare Act sufficiency duty

The Children Act 1989 introduced a general duty for local authorities to provide daycare for preschool and other children ‘as is appropriate’ and to review provision periodically (sections 18 and 19). This duty was revised through the School Standards and Framework Act 1998, which introduced the principle that local authorities should provide ‘sufficient’ childcare in order to better match supply with demand (section 118). That Act also introduced a duty on local authorities to produce Early Years Development Plans (section 120) which set out how the sufficiency duty would be met and were approved by the Secretary of State. Subsequent regulations dictated that these plans must be produced on an annual basis.

¹ For example, the Education Acts 1996 and 2011, and Education and Inspections Act 2006, set out a comprehensive framework for the sufficiency of primary and secondary education; local transport plans are a statutory obligation derived from the Transport Act 2000; local development (housing) plans are required by the [Planning and Compulsory Purchase Act 2004](#); and the Children Act 2004 requires local authorities to produce a children and young people’s plan.

From 2002, the government began to fund local authorities to support expansion of the childcare market through sustainability grants and start-up capital. To guide this funding, the 2002 Education Act further revised the sufficiency duty to place a greater emphasis on a local authority's proposed actions to meet current and projected demand (sections 149 and 150).

The Childcare Act 2006 set out to strengthen this duty, reflecting the growing awareness that for a number of reasons the childcare market is relatively unresponsive to demand and that there are particular gaps in provision, such as childcare for children with additional needs, that the free market is never likely to address. The 2004 Childcare Strategy stated:

*A key challenge for Government and for local authorities in delivering the vision will be securing sufficient supply to meet parental needs in areas where the market struggles to support affordable, good quality provision. This is particularly the case in some rural and disadvantaged areas.*²

The 2004 strategy committed to a 'new duty on local authorities in place by 2008 so that over time they will secure sufficient supply to meet the needs of families.'³ The strategy deliberately strengthened the existing duty:

*The Government intends to clarify and strengthen local authorities' legal responsibilities with a new duty to secure sufficient provision to meet local need. ... In order to make a reality of the Government's commitment, it will be important that there is strong local leadership and that the needs of particular communities are reflected in the pattern of local provision. Local authorities will need to ensure that there are robust arrangements in place for consultation, planning and intervention in order to secure the delivery of sufficient quality childcare places.*⁴

The Childcare Act 2006 placed a duty on local authorities to provide sufficient childcare for working parents and those with disabled children 'as far as practicable' (section 6) and to produce, every three years, a childcare sufficiency assessment (section 11) to support the section 6 duty. The section 11 duty to assess was separated from section 6 only because it was intended to also support other sections of that Act, such as the section 7 duty which underpins the universal childcare offer. The stronger legislative language, focus on working parents and detailed regulations were all intended to prompt progress in addressing gaps in childcare provision.

The duty itself was not directly funded because it was intended to guide how local authorities used resources provided through the Sure Start grant (at the time £2.7billion per year), the extended schools grant (£440million) and the childcare transformation fund (£125million). These funding streams have since been merged into the current Early Intervention Grant and Dedicated Schools Grant. Local authorities continue to have significant early years funding at their disposal that must be effectively targeted.

² [Choice for parents, the best start for children: a ten year strategy for childcare](#), Department for Education and Skills (2004), p. 40

³ *Choice for parents, the best start for children: a ten year strategy for childcare*, p. 1

⁴ *Choice for parents, the best start for children: a ten year strategy for childcare*, p. 57

The effectiveness of the sufficiency duty since 2006

The Childcare Act sufficiency duty has achieved success in areas where local authorities have embraced, and even innovated around, the framework for measurement, analysis and action the Act creates. However, the duty has not been supported as a tool to drive national improvement or address the most persistent childcare gaps and overall improvement in childcare sufficiency has therefore been limited.

Recent Family and Childcare Trust survey data on childcare sufficiency is set out below. A central flaw of the existing section 11 duty is the absence of prescribed measures that are comparable across local authorities. This makes it difficult to measure progress nationally except through the type of broad measures used in this survey.

Percentage of local authorities reporting sufficient childcare⁵

(%)	2011 (England/Wales)	2012 (England)	2013 (England)
0 to 2 year olds	36	35	20
3 to 4 year olds	42	50	53
5 to 11 year olds	28	29	31
12 to 14 year olds	14	21	16
Disabled children and children with special educational needs	11	12	14
Children of working parents	44	46	40
Children of parents working atypical hours (shift work etc)	12	12	9

Childcare Costs Survey 2013 local authority data on childcare sufficiency (figures may not sum to 100 due to rounding or incomplete responses)

(%)	Yes	Most	Parts	No	DK/NA
Under twos	20	44.3	21.3	4.9	4.1
3-4 year olds	53.3	31.1	10.7	1.6	3.3
5-11 year olds	31.1	40.2	22.1	1.6	4.9
12-14 year olds	15.6	33.6	28.7	5.7	15.6
Disabled children	13.9	39.3	31.1	6.6	9
Parents working full time	40.5	45.5	6.6	1.7	5.8

⁵ Childcare Costs Surveys 2011 to 2013, Daycare Trust and Family and Parenting Institute

Parents working atypical hours	9.2	25	39.2	10.8	15
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Holiday childcare sufficiency 2013:

Table 9: Percentage of local authorities with sufficient childcare across the whole local authority for specific groups of children, 2013.

Region/nation	Percentage of local authorities reporting sufficient holiday childcare for 4-7 year olds	Percentage of local authorities reporting sufficient holiday childcare for 8-11 year olds	Percentage of local authorities reporting sufficient holiday childcare for children aged 12 and above	Percentage of local authorities reporting sufficient holiday childcare for disabled children	Percentage of local authorities reporting sufficient holiday childcare for working parents
East of England	27%	18%	9%	18%	27%
East Midlands	40%	20%	20%	0%	20%
Greater London	17%	26%	17%	13%	22%
North East	57%	42%	14%	28%	57%
North West	71%	57%	28%	50%	79%
South East	29%	29%	7%	14%	21%
South West	25%	25%	17%	0%	0%
West Midlands	30%	30%	20%	20%	30%
Yorkshire and Humberside	21%	21%	14%	7%	14%
England (Regional Average)	36%	30%	16%	18%	30%
Wales	16%	6%	0%	0%	64%

Source: Family and Childcare Trust Holiday Childcare Costs Survey 2013

A second source of data is the annual Department for Education childcare survey of parents, which shows there has been little improvement in parents' experience of access to childcare since the 2006 Childcare Act. In 2007, 42 per cent of parents believed there were the right number of childcare places locally and 34 per cent that there were not enough places.⁶ In 2011, these figures were 44 per cent and 37 per cent respectively.⁷

Daycare Trust analysis of 2011 sufficiency assessments in London (appendix A) indicated that almost all local authorities had significant gaps in provision. The greatest gap in childcare supply in London is of affordable childcare, followed by childcare for parents who work atypical hours (around half of families have a parent who must work shifts or regular overtime) and childcare for school age children.

Research and evaluations to support the free early education for the most disadvantaged two year-olds, and the provision of the universal offer for three and four year-olds, have also identified a chronic shortage of high quality places for children in disadvantaged areas and with special educational needs and disabilities.⁸

⁶ [Childcare and early years survey of parents 2007](#), Department for Education (2007)

⁷ [Childcare and early years survey of parents 2011](#), Department for Education (2011)

⁸ [Early Education Pilot for Two Year Old Children Evaluation](#), Department for Children, Schools and Families (2009); [Delivering the Free Entitlement to Education for Three and Four Year Olds](#), National Audit Office (2012); [Childcare Sufficiency and Sustainability in Disadvantaged Areas](#), NatCen Social Research for the Department for Education (2012).

More recently, research for the Childcare Commission found that more than half of stay-at-home mothers would prefer to be in paid employment and a quarter of working mothers would increase their hours if they could arrange suitable childcare.⁹

The value of the statutory sufficiency duty is illustrated by a comparison with Scotland, which lacks a legislative sufficiency duty but has 'statutory guidance' similar to that the coalition is proposing for England (appendix B). Despite Scotland's statutory guidance, a third of Scottish local authorities do not collect adequate data to answer basic questions about childcare sufficiency.¹⁰ Moreover, Scotland has half the proportion of private and voluntary sector childcare providers as England, at least in part due to the greater work English local authorities undertake to promote and support new entrants in the market as part of the sufficiency duty, based on gaps identified through sufficiency assessments.

Problems with the current section 11 duty

The quality of sufficiency assessments varies greatly. In 2008, the Office for Public Management (OPM) was asked by the Department for Education to review 40 of the first (2008) round of sufficiency assessments. OPM's report, *Reviewing Childcare Sufficiency Assessments*, concluded that local authorities had 'encountered significant challenges in the mapping of supply and demand' of childcare. OPM recommended that the Department for Education:

- establish a single definition of childcare demand;
- compile a list of data sources to help local authorities best map current and future childcare demand;
- identify and publish good practice; and
- organise workshops to enable local authorities to discuss the challenges and solutions of assessing childcare.¹¹

Both English and Welsh governments subsequently produced limited sufficiency assessment guidance but failed to address OPM's recommendation of a consistent measure of childcare demand.¹² The last government did recognise emerging potential flaws of the duty in its 2009 five year review of the 2004 childcare strategy, which committed to enforcing a duty in statutory guidance on local authorities to produce action plans as part of the sufficiency assessment process. The 2010 Childcare Act guidance *Securing Sufficient Childcare* implemented this commitment and states:

As with any action plan, it will be important to be specific about the actions that are needed, the rationale for each action, how it will be delivered, who will be responsible, when it will be done by, and how it will be resourced.

⁹ [House of Lords written answer to The Earl of Listowel](#), 5 August 2013

¹⁰ [The 2013 Scottish Childcare Report](#), Family and Childcare Trust and Children in Scotland, p. 11

¹¹ [Reviewing Childcare Sufficiency Assessments](#), Office for Public Management (2008), pp. 52-53

¹² [Securing Sufficient Childcare: Statutory guidance for local authorities in carrying out their childcare sufficiency duties](#) (Department for Education, 2010) and [Toolkit for conducting a childcare sufficiency assessment](#) (Welsh Assembly Government, 2010)

*Just as with the sufficiency assessment, it is important that the action plan is monitored and updated regularly to ensure that it takes account of the changing context.*¹³

Analysis of sufficiency assessments in London conducted by Daycare Trust in 2012 found evidence that this guidance is being followed in as few as half of local authorities (appendix A). This means that even where an effective assessment is made, the information obtained does not instigate effective steps to reduce gaps in childcare provision. It is therefore crucial to hold local authorities to account for action and ensure assessments are an active rather than passive process.

A three yearly assessment cycle has also proved to be problematic. One reason for this is that it is impossible for local authorities to accurately predict factors such as migration and birth rates over a three year period. As a consequence, many of the 2011 sufficiency assessments required significant adjustments to predictions made in 2008.

The coalition acknowledged such problems in the 2011 Childcare Act 2006 post-legislative review:

*The Government is keen to improve the way in which local authorities account for the delivery of their duty under Section 6. In its strategy paper, Families in the Foundation Years, published in July 2011, the Government announced plans to bring forward proposals that local authorities should report annually on their section 6 sufficiency duty, and particularly how they are supporting families of children with disabilities to access childcare. The Government will consult on the details of this proposal as part of a consultation in autumn 2011 on arrangements to streamline departmental guidance to local authorities.*¹⁴

This commitment became an announcement that the government would consult on removing the section 11 duty to assess, which took place in winter 2011/12. Earlier this year the Department for Education published new, drastically foreshortened, guidance for local authorities on providing early years services (the previous *Securing Sufficient Childcare* guidance published in 2010 ran to 70 pages; the replacement guidance, appendix B, is one page long).

There appears to be no serious component to this plan that is focused on improving how local authorities account for the delivery of the section 6 duty, for example through updating guidance as local authorities have requested, or deliver more childcare support to the families of children with disabilities, as the government initially proposed to do.

Consultation on the proposed changes¹⁵

¹³ [Securing Sufficient Childcare](#), Department for Education (2010), p. 12

¹⁴ [Post-legislative assessment of the Education and Inspections Act 2006, Childcare Act 2006 and Children and Adoption Act 2006](#), Department for Education (2011), p. 58

¹⁵ *Supporting Families in the Foundation Years: Proposed Changes to the Entitlement to Free Early Education and Childcare Sufficiency*. Department for Education (2011)

The government has argued that consultation showed support for repealing section 11 of the Childcare Act. The Family and Childcare Trust has reviewed the responses to the consultation and believes views are more mixed than the government has suggested, largely because the consultation questions did not test views on the specific issue of repealing section 11 (as opposed to the more problematic regulations).¹⁶ The consultation also showed concrete evidence of strong demand from local authorities for additional guidance on sufficiency assessments from the Department for Education.

The government consulted on two questions: whether to move to an annual sufficiency assessment and whether to remove the current section 11 duty and the associated regulations. Many comments by respondents revealed that support for these two steps does not mean support for removing section 11 itself. A number of local authority respondents believed that funding pressures mean that removing section 11 will lead to the assessment having a lower financial priority or even not happening at all. Limiting the consultation questions this way meant the exercise achieved no clarity on support for maintaining but revising the section 11 duty.

The government stated in its consultation response that ‘Views on the level of prescription on the content of the report in the guidance were mixed.’¹⁷ In fact, there was clear demand for more detailed national guidance than the government has published (appendix B). A little under half of local authority respondents—60 of the 129 answering the sufficiency questions—communicated the need for significantly more guidance than the Department for Education has prepared (including the updated guidance published following the consultation). Thirteen local authorities were satisfied with the guidance and those remaining did not address the issue.

There was particular demand from local authorities for guidance that includes recommended nationally consistent sufficiency measure and a suggested structure for reports, as well as case studies and best practice examples. Other notable concerns about gaps in the guidance included how to balance periodic in-depth consultation with parents and providers with annual reporting, and the importance of explicit links with child poverty plans. Many local authorities did not appear to realise the government intends to replace the previous 70 page guidance with a one page outline: their impression was that the extremely short statutory guidance would be complemented with a further document.

There is also a concern that the consultation on section 11 was to some extent undermined because it was ‘tacked on’ to a consultation on the free two year old offer for the most disadvantaged children. A large number of parents and childcare providers responding to the consultation wished to comment on the two year old offer but were unlikely to be familiar with section 11 of the Childcare Act 2006 and its regulations.

Of 167 providers and parents that answered (ticked a box) for the sufficiency questions, 35 provided commentary. In contrast, 168 providers and parents both

¹⁶ 423 people and organisations responded to the consultation. FCT received 382 responses; 41 respondents had requested that their responses remained confidential.

¹⁷ [Government response to Supporting Families in the Foundation Years: Consultation on Proposed Changes to Free Early Education and Childcare Sufficiency](#) (2012), p. 17

answered and commented on questions concerning the two year old offer. The disparity in these figures suggest the consultation gave the impression of a greater level of public and professional support for removing section 11 than in reality is the case. The decision by the government to consult in this manner was a practical one but there is good evidence this approach limited the effectiveness of the consultation.

Alternatives to repealing section 11

The argument put forward by ministers that current regulations are overly prescriptive and should be repealed does not engage fully with the task of meeting and improving the effectiveness of the Childcare Act sufficiency duty. In fact, there is a sensible solution to the problems cited by the government: maintaining a statutory section 11 duty but simplifying regulations and providing improved guidance and support for local authorities. This approach has been put forward individually by a number of local authorities, providers and third sector organisations.

Ministers risk removing the demonstrably successful component of the section 11 duty—its statutory nature—and ignore the opportunity the Department for Education identified early in this Parliament to improve the effectiveness of the sufficiency duty.

Whilst there is room for simplifying the current section 11 regulations, the concise, high quality assessments and action plans a number of local authorities produce suggest many of the current problems stem from poor quality guidance and inadequate support rather than the regulations themselves. Because there is no straightforward data available on childcare demand, it is critical that the government evaluates and advises on the most appropriate proxy measures.

The best local authorities make understanding gaps in childcare part of a continuing process of managing the local market and have made the assessment itself a place to collate information they already have to hand. The shift to annual assessments makes the production of new guidance for local authorities critical to avoid a repetition of the difficult learning experiences many local authorities faced when the sufficiency duty was first introduced.

Two principle problems are at the heart of the poor standard of many sufficiency assessments: the lack of agreed, straightforward process to map demand and supply and identify gaps, and the failure of local authorities to act on sufficiency assessments, or be held accountable for action. A simpler section 11 statutory duty that addresses these flaws whilst making the sufficiency assessment process a more useful exercise can be achieved by:

- 1) replacing a three yearly exercise with an annual exercise, as the government has proposed;
- 2) maintaining but simplifying the section 11 statutory duty by removing duplication and unnecessary prescription in regulations, but including the crucial requirement for both an assessment and action plan;

- 3) as many local authorities have requested, new guidance should be prepared to support annual assessments. The guidance should include consistent demand and supply measures to encourage cross-border working and benchmarking.¹⁸
- 4) The Department for Education should gather evidence to hold local authorities to account for progress against the sufficiency duty and support effective national policy development.

The Department for Education has stated that it does not wish to pursue this solution because it would mean retaining some degree of central prescription.¹⁹ The Childcare Act sets out a general definition of sufficiency and was designed to function with more specific detail set out in section 11 and regulations. This reasoning is therefore hard to understand: without any degree of prescription, the sufficiency duty would have no meaning or impact. Without a national framework, local authorities dictate both their own definition of sufficiency and the measures against which they are held accountable. For local authorities under continuing financial pressure, this approach creates incentives to mask problems or limit ambition in meeting the sufficiency duty.

The Department has also suggested that learning by local authorities since 2006 and regional work between local authorities to share good practice means that central guidance on the sufficiency duty is no longer necessary. The poor standard of many assessments, strong demand for central support from many local authorities and the lack of significant progress against the sufficiency duty, all detailed in this briefing, suggest that this is not the case. The regional childcare networks set up to act as a route for information sharing, including on the sufficiency duty, were part of the Government regional offices that were abolished in 2011 and these networks are now largely defunct outside of London and the South East.

Regardless of the outcome in relation to clause 76 of the Children and Families Bill, the Department for Education should continue to publish full guidance on the sufficiency duty, clarify best practice and promote understanding of local authorities' legal duties. Moving to an annual assessment without providing guidance and improving support is likely to exacerbate confusion, cause waste and do little to improve reporting or achievement against the Childcare Act sufficiency duty.

Appendix A: Case study: 2011 childcare sufficiency assessments in London

As part of the *2012 London Childcare Report*, Daycare Trust analysed the 32 childcare sufficiency assessments produced in 2011 by the London boroughs and the City of London.²⁰ The exercise revealed the importance of the sufficiency assessments: gaps in provision were identified in each local authority area and were likely to have a significant impact on access to high quality childcare and local

¹⁸ The Welsh Assembly Government *Toolkit for conducting a Childcare Sufficiency Assessment* includes a useful table and discussion of the available data on childcare sufficiency

¹⁹ *Government response to Supporting Families in the Foundation Years: Consultation on Proposed Changes to Free Early Education and Childcare Sufficiency*, pp. 17-18

²⁰ [2012 London Childcare Report](#), Daycare Trust (2012)

employment. The analysis also revealed wide variation in the quality of assessments and, crucially, follow up action.

Summary of findings and analysis:

- There were significant gaps in childcare in all areas. The greatest gap in childcare supply in London is of affordable childcare, followed by childcare for parents who work atypical hours (around half of families have a parent who must work shifts or regular overtime) and childcare for school age children.
- Half of the published assessments lacked formal action plans, making those assessments a potentially passive exercise.
- Whilst there was generally a common approach to gathering qualitative data from parents through surveys and focus groups, a wide variety of quantitative approaches were used to assess supply and demand. This meant the standard and usefulness of statistical analysis varied widely.
- There was little correlation between the length of an assessment and its quality or effectiveness in influencing provision, suggesting a lack of clear guidance and support is responsible for many excessively long and complex assessments.
- Some unnecessary work is done by local authorities that duplicates existing research. For example, there is usually no need to reproduce research on how childcare affects work decisions by parents, or what factors are most important to parents when choosing childcare. Local authorities often struggle to produce useful insight due to low sample sizes.
- Awareness of childcare options and information for parents is a serious problem, regardless of actual sufficiency of childcare provision. There is a pressing need for effective brokerage services and good information on local childcare provision.

Appendix B: Department for Education sufficiency guidance to local authorities from September 2013²¹

Securing Sufficient Childcare

Outcome: *parents are able to work because childcare places are available, accessible and affordable and are delivered flexibly in a range of high quality settings.*

*To secure sufficient childcare places, local authorities **are required** by legislation to:*

²¹ [Early education and childcare: Statutory guidance for local authorities](#), Department for Education (2013), p. 14

B.1 Secure sufficient childcare, so far as is reasonably practicable, for working parents, or parents who are studying or training for employment, for children aged 0-14 (or up to 18 for disabled children).

*B.2 Prepare assessments of the sufficiency of the provision of childcare in their area at least every three years. * To secure sufficient childcare places, local authorities should:*

B.3 Take into account what is 'reasonably practicable' when assessing what sufficient childcare means in their area and;

- *the state of the local childcare market, including the demand for specific types of providers, in a particular locality and the amount and type of supply that currently exists;*
- *the state of the labour market; and*
- *the quality and capacity of childcare providers, including their funding, staff, premises, experience and expertise.*

B.4 Report annually to elected council members on how they are meeting their duty to secure sufficient childcare, and make this report available and accessible to parents. Local authorities are responsible for determining the appropriate level of detail in their report, geographical division and date of publication. However, the report should include:

- *a specific reference to how they are ensuring there is sufficient childcare available to meet the needs of: disabled children; children from families in receipt of the childcare element of Working Tax Credit or Universal Credit; children aged two, three and four taking up early education places; school age children; and children needing holiday care;*
- *information about the supply and demand of childcare for particular age ranges of children, and the affordability, accessibility and quality of provision; and*
- *details of how any gaps in childcare provision will be addressed.*

** The Department has introduced measures in the Children and Families Bill to repeal the duty on local authorities to prepare assessments of the sufficiency of provision of childcare in their area at least every three years (section 11 of the Childcare Act 2006).*

Appendix C: Care Bill Section 5

The coalition government recently introduced the Care Bill to Parliament, which contains a section (5) modelled on the Childcare Act sufficiency duty.²² The Care Bill includes, in primary legislation, a sufficiency duty, a duty to understand demand and supply, and a duty to support the market to meet current and future demand for care. This legislative model offers an example of how the Childcare Act section 11 duty to assess could be updated in line with the wider legislative obligations on local authorities:

5 Promoting diversity and quality in provision of services

(1) A local authority must promote the efficient and effective operation of a market in services for meeting care and support needs with a view to ensuring that any person in its area wishing to access services in the market—

- (a) has a variety of providers to choose from who (taken together) provide a variety of services;*
- (b) has a variety of high quality services to choose from;*
- (c) has sufficient information to make an informed decision about how to meet the needs in question.*

(2) In performing that duty, a local authority must have regard to the following matters in particular—

- (a) the need to ensure that the authority has, and makes available, information about the providers of services for meeting care and support needs and the types of services they provide;*
- (b) the need to ensure that it is aware of current and likely future demand for such services and to consider how providers might meet that demand;*
- (c) the importance of enabling adults with needs for care and support, and carers with needs for support, who wish to do so to participate in work, education or training;*
- (d) the importance of ensuring the sustainability of the market (in circumstances where it is operating effectively as well as in circumstances where it is not);*
- (e) the importance of fostering continuous improvement in the quality of such services and the efficiency and effectiveness with which such services are provided and of encouraging innovation in their provision.*

²² The Care Bill duty originates in a Private Members Bill introduced by Barbara Keeley and supported by Carers UK (who discussed the Childcare Act sufficiency duty with Daycare Trust), which the government subsequently agreed to incorporate in revised form into the Care Bill itself.

(3) In having regard to the matters mentioned in subsection (2)(b), a local authority must also have regard to the need to ensure that sufficient services are available for meeting the needs for care and support of adults in its area and the needs for support of carers in its area.

(4) In meeting an adult's needs for care and support or a carer's needs for support, a local authority must have regard to its duty under subsection (1).

(5) In cases where a local authority performs the duty under subsection (1) jointly with one or more other local authorities in relation to persons who are in the authorities' combined area—

(a) references in this section to a local authority are to be read as references to the authorities acting jointly, and

(b) references in this section to a local authority's area are to be read as references to the combined area.

(6) "Services for meeting care and support needs" means—

(a) services for meeting adults' needs for care and support, and

(b) services for meeting carers' needs for support.

(7) The references in subsection (6) to services for meeting needs include a reference to services, facilities or resources the purpose of which is to contribute towards preventing or delaying the development of those needs.

Appendix D: The Childcare Act 2006 (Childcare Assessments) Regulations 2007²³

(Following Citation, commencement and interpretation):

Consultation

2. The following persons and descriptions of persons are prescribed for the purposes of section 11(6)(a) of the Act—

(a) the Local Safeguarding Children Board(10) established for the area of the authority;

(b) the Secretary of State, in relation to his functions under section 2 of the Employment and Training Act 1973(11);

(c) the authority's relevant partners within the meaning of section 10(4) of the Children Act 2004(12);

(d) such—

²³ [The Childcare Act 2006 \(Childcare Assessments\) Regulations 2007](#)

- (i) children,*
- (ii) parents,*
- (iii) childcare providers,*
- (iv) employers,*
- (v) governing bodies of maintained schools and proprietors of schools other than maintained schools,*
- (vi) governing bodies of institutions within the further education sector or the higher education sector within the meaning of section 91 of the Further and Higher Education Act 1992(13),*
- (vii) neighbouring authorities, and*
- (viii) organisations representing the interests of persons mentioned in paragraphs (i) to (iv), or other organisations with an interest in the provision of childcare, as the authority consider appropriate.*

Preparation of a childcare assessment

3.—(1) A childcare assessment must be prepared according to the criteria specified in paragraphs (2) and (3).

(2) The criteria are, in relation to each authority sub-area—

(a) the number of free nursery provision places required by parents;

(b) the number of free nursery provision places provided.

(3) The criteria are, in relation to each authority sub-area, each age range of children and each type of childcare—

(a) the number of places required by parents;

(b) the number of places provided;

(c) the number of places required by parents in respect of which the child care element of working tax credit is payable;

(d) the number of places provided in respect of which the child care element of working tax credit is payable;

(e) the times of day at which childcare is required by parents;

(f) the times of day at which childcare is provided;

- (g) the range of session lengths provided;*
 - (h) the requirements for specialist care for children with special educational needs and disabled children;*
 - (i) the number of places provided by reference to type of special educational need or need for specialist care (in the case of disabled children);*
 - (j) the number of places provided but not being used; and*
 - (k) the range of charges payable in respect of childcare and parents' ability to pay the charges.*
- (4) The authority must make available for comment a draft childcare assessment.*
- (5) In this regulation a "sub-area" of an authority is—*
- (a) an electoral division or ward of the authority, or*
 - (b) such other appropriate geographical division into which the authority have notionally divided their area.*

Prescribed matters for the purposes of the childcare assessment

- 4. A childcare assessment must deal with the following matters—*
- (a) the information obtained by the authority pursuant to regulation 3(2) and*
 - (3) expressed in relation to the whole of the area of the authority;*
 - (b) a description of the sufficiency (or otherwise) of childcare in the authority's area, described by reference to the following—*
 - (i) types of childcare;*
 - (ii) age ranges of children;*
 - (iii) charges for childcare and parents' ability to pay the charges;*
 - (iv) times of day;*
 - (v) type of special educational need or need for specialist care (in the case of disabled children); and*
 - (vi) location within the authority's area;*
 - (c) the authority's estimate of future changes in the supply of, and demand for, childcare in the period covered by the assessment.*

Publication of childcare assessment

5. An authority must publish a childcare assessment by—

(a) placing it on the authority's website; and

(b) making copies available in such—

(i) public libraries,

(ii) premises of childcare providers,

(iii) schools, and

(iv) places to which the public have access, as the authority consider appropriate.