



Llywodraeth Cymru  
Welsh Government

# Justice System Impact Identification

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Form

**1. Your contact details Policy Lead**

1.1. Name / Job Title	Catrin Davies – Policy Lead
1.2. Department / office / business area	Education and Public Services
1.3. Telephone number	0300 025 0037 [REDACTED]
1.4. Email address	Catrin.davies@gov.wales
1.5. a) Date of submission of this form	Date of Submission: 18 January 2018
1.6. b) When is a response required?	Response Requested by: 28 February 2018

**2. Additional contact details**

2.1. Legal Contact	[REDACTED]
2.2. Telephone number	[REDACTED]
2.3. Email address	[REDACTED]

### 3. General information

- 3.1. Please provide a) contact details of your lead official for the appraisal of costs or savings and;  
b) the Justice Policy lead if known.



- 3.2. In brief, what is your proposal? (no more than half a page) (*This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts*).

#### **Childcare Funding (Wales) Bill**

The Welsh Government is introducing a Bill into the National Assembly for Wales to confer a power on the Welsh Ministers to provide funding for childcare for qualifying children of working parents. The Bill contains a power to make regulations about the administration and operation of arrangements made by the Welsh Ministers for the purposes of providing such funding. In accordance with this power, it is intended to make provision in regulations to facilitate the sharing of data pertinent to the development of a national application and eligibility checking system in respect of the Childcare Offer for Wales (“the Offer”). This will be a primarily online system, although it will also be possible for applications to be made offline, with a dedicated telephone helpline available.

The primary focus of the Bill is to enable the collection and consideration of data pertinent to the determination of a person’s eligibility for the Offer. To that end it is intended that regulations made under the Bill will make it possible for relevant UK Government departments to share information with the Welsh Ministers for the purposes of determining a person’s eligibility and for the onward transmission of relevant data and determinations as required. The Bill also permits the making of arrangements for imposing penalties in situations where applicants provide false or misleading information or behave dishonestly. Regulations made under the Bill must provide arrangements for applicants to ask for a penalty or a decision made about their eligibility to be reviewed and establish a process for appeals against a penalty or in relation to a decision about eligibility.

It is intended that the application and eligibility checking system and related review and appeals procedures in respect of the Offer in Wales will replicate the arrangements already established in respect of the Childcare Offer in England. The application and eligibility checking system in respect of the Offer in England is being administered by HMRC and Welsh Government and HMRC officials are working closely on development of the Bill.

- 3.3. Please specify the name of all related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

Following Royal Assent, relevant provisions of the Bill will be commenced by Order. Regulations made under the Bill will be made by the affirmative procedure. An administrative scheme will be established in tandem with the regulations.

- 3.4. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

- a) The legislative changes are expected to come into force during 2019 or 2010 with the first anticipated impact on the justice system likely to arise shortly thereafter.

- 3.5. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

Individuals

- Private Institutions (e.g. Businesses)
- Public Institutions (e.g. Government Departments)

Civil penalties will be imposed on applicants in situations where individuals provide false or misleading information and in the event of dishonest conduct in connection with the process of making an application.

HMRC, acting as the agent of the Welsh Ministers, will accept applications and determine eligibility for the Offer. HMRC will also operate the system of civil penalties referred to in the paragraph above.

It is acknowledged that dishonest conduct of an applicant parent could come within the definition of fraud for the purposes of the Fraud Act 2005. It is for this reason that provision has been made in the Bill so that a person convicted of an offence would not be liable for a financial penalty by virtue of the Bill.

- 3.6. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the MoJ administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- Wales only
- England
- Scotland
- Northern Ireland
- Other (Please Specify)

The proposed Bill will provide for a penalties and appeals process in Wales which is identical to that which is in operation in England for the Childcare Offer.

- 3.7. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland:-

- a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?
- b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

N/A

- 3.8. What are the options under consideration and how does this change the existing situation?

Four options have been considered in terms of developing a national application and eligibility checking process for the Childcare Offer in Wales, which are:

1. Welsh Government accepts applications and checks eligibility, with appeals routed to one of the Devolved Tribunals or to an Appeals Panel;
2. Each Local Authorities accepts applications and manually checks eligibility (do nothing option) and sets up their own appeals process;
3. A contracted third party accepts applications and checks eligibility and sets up an appeals process;
4. HMRC administers applications and eligibility checks and appeals routed to the Social Entitlement Chamber of the First-tier Tribunal (as is the case in England with the English Offer)

Option 4 is considered the preferred option and the one most likely to provide the most cost-effective, consistent, effective and efficient solution. A Regulatory Impact Assessment for the Bill has been undertaken and published as part of the Explanatory Memorandum.

#### Proposed penalties regime

We wish to follow the penalties regime which is set out at regulations 25 to 32 of The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016.  
<http://www.legislation.gov.uk/ukxi/2016/1257/contents/made>

We wish to enable applicants to appeal against the imposition of a penalty by HMRC, or the amount of that penalty, provided they have first exhausted the internal review procedure to be administered on behalf of the Welsh Ministers by HMRC. Any appeal arising will be to the Social Entitlement Chamber of the First-tier Tribunal.

#### Appeals against a determination

The Bill contains a regulation-making power to enable an applicant to appeal against a determination, but only if that applicant has first exhausted any internal review "route". Please see regulations 20 to 24 of The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 for an indication of how we anticipate we will be setting out such requirements.

We wish the appeal route to be to the Social Entitlement Chamber of the First-tier Tribunal, as is the case in England. This has the benefit of fitting well with that court also hearing Tax Free Childcare appeals that will often turn on the same facts.

We want the Tribunal to be able to uphold the determination or to quash it and substitute its own determination, in cases where it finds that there has been either an error in fact or an error in law.

- 3.9. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

See Above

## Criminal Offences and Civil Penalties and Sanctions

3.10. Which of the following are you creating / amending? (Tick all that apply)

- Civil Sanctions
- Fixed Penalties
- Civil Orders
- Criminal Sanctions
- Criminal Offences
- Other (Please Specify)

The Bill contains a regulation-making power for the establishment of a system of civil penalties which may be imposed on applicants who provide false or misleading information and in the event of dishonest conduction in connection with an application.

The Bill contains a regulation-making power for the Welsh Ministers which includes power to create criminal offences in connection with the onward disclosure of qualifying information otherwise than in accordance with the Regulations.

3.11. If you are creating a criminal offence, is it:

- Summary Only (heard before a bench of lay magistrates / judge only)
- Triable Either Way
- Indictable Only (heard before a judge and jury)

3.12. Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be a reduced need for enforcement action?

The Bill limits the penalty for any criminal offence relating to the onward disclosure of information so that any penalty of imprisonment on conviction on indictment may not specify a term of imprisonment exceeding 2 years (whether or not accompanied by a fine).

It is anticipated that the provision made in regulations under the Bill will mirror the provision made in relation to the English Childcare Offer within regulation 19 of the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016.

3.13. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

HMRC, who administer the English scheme on behalf of the Department for Education in parallel with Tax-Free Childcare (a UK-wide scheme), have provided information on the early experiences there to help evaluate the likely needs for the Welsh scheme. The policy and systems have been designed to make it as easy as possible for parents to get it right, so the number of appeals and penalties is expected to be low. There is also a light touch to penalties in the early days of the scheme. They have advised that no civil penalties have been imposed in respect of the Childcare Offer in England since the system went live in summer 2017. The number of penalties is expected to be low in normal running. HMRC have also confirmed that no criminal sanctions have been imposed in respect of the Childcare Offer or Tax Free Childcare schemes in England since the system went live in summer 2017. Such sanctions are expected to be very rare in normal running.

Furthermore, HMRC have informed us that a small number of appeals have gone to hearing before the Social Entitlement Chamber of the First-tier Tribunal in relation to eligibility for the English scheme since the system went live in the summer of 2017.

There have been no criminal prosecutions in respect of the English Offer and we would expect the number of offenders being committed to custody as a result of the provisions in this Bill to be minimal for reasons explained earlier.

Published Ministry of Justice tribunal figures indicate that 15 appeals were received up to the end of quarter 2 of the 2017/18 financial year in respect of the 30 hour Childcare Offer in England.

The population of Wales is very small comparatively to England (the population of Wales is only 5% of the population of England and Wales (ONS, 2011 Census). If we apply this proportionately to the number of appeals in England noted above, we could assume we will have less than 1 appeal in a six month period. Although we might expect numbers to rise as the programme becomes established and more people apply for the Offer, numbers are still thought to be low for the above reasons.

3.14. What proportion of offenders will be tried in the Crown Court and what proportion will be tried in the Magistrates' Court?

The vast majority of cases would be tried in the Crown Court.

3.15. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

The Bill makes provision for the establishment of a regime of civil penalties which will be administered on behalf of the Welsh Ministers by HMRC. Maximum penalties being proposed in respect of applicants providing inaccurate, false or misleading information or for dishonest conduct are as follows:

Up to £300 for inaccurate declarations.

Up to £500 for providing false or misleading information or statements.

Up to £3,000 for dishonesty.

These are maxima and it remains within the discretion of the Welsh Ministers (HMRC acting on behalf of Welsh Ministers) to impose a less civil penalty depending on the circumstances.

The Bill specifies that regulations made by the Welsh Ministers which create a criminal offence in relation to the onward disclosure of information made for any penalty of imprisonment on conviction on indictment may not specify a term of imprisonment exceeding two years (whether or not accompanied by a fine).

The provision in our regulations for the penalty on summary conviction would be to imprisonment for a term not exceeding 12 months or a fine, or both (if the offence is committed before the commencement of 154(1) of the Criminal Justice Act 2003, the term of 12 months is to be read as a reference to 6 months).

3.16. Please provide details of any proxy or current offences and / or penalties on which the proposed penalties are based.

Our proposals are based on the current model operating in England. Details of the maximum penalties are set out in regulations 25 to 27 of The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 (in relation to the civil penalties) and regulation 19 in relation to criminal penalties.

The Bill will be making provision that is on par with the penalties for unlawful disclosure of confidential information contained in the Commissioners for Revenue and Customs Act 2005.

3.17. Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.

As at 6.2

See also section 19 of the Commissioners for Revenue and Customs Act 2005.



3.18. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

As previously indicated, it is intended that regulations will specify that if found guilty of an offence, a person will be liable:

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or both, or

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or both.

A person convicted of an offence would have a criminal record and this may have an impact on that person's ability to secure employment during the currency of that record.

Any fine imposed may cause the person convicted financial hardship depending on their circumstances and the level of the fine imposed.

It is considered that given the personal and sensitive nature of the information that may be required to be disclosed for the purposes of determining eligibility to receive funding under the Childcare Offer that the rights of the persons to whom that information applies must be afforded protection. The proposed sanctions within the regulations are intended to offer such protection and are considered to be a proportionate sanction for the unauthorised disclosure of such information.

3.19. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

N/A

#### 4. HM Courts & Tribunals Service and the Welsh Tribunals Service

##### Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

4.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

We expect there to be minimal change in HM Courts and Tribunals Service given that the regime is already in place in respect of the Offer in England. We also expect there to be minimal increase in the volume of applications/cases to HM Courts and Tribunals for reasons explained earlier.

No impact on Welsh Tribunals.

4.2. Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

No

Yes (please provide details)

## Appeal Rights

- 4.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or Welsh Tribunals)?

The proposals create a new right of appeal for people seeking to access the Offer in Wales. It is anticipated that the appeals will be made to the Social Entitlement Chamber of the First Tier Tribunal and that appeals will be administered by HMCTS in the same way as they do for appeals made in respect of the Childcare Offer in England.

- 4.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

N/A

## Alternative Dispute Resolution

- 4.5. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

N/A

## Prosecution and Enforcement

- 4.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

It is intended that the Crown Prosecution Services will act to prosecute defendants.

- 4.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

The draft Bill does not contain any provision about the enforcement of penalties imposed on applicants who provide false or misleading information and in the event of dishonest conduct in connection with an application.

However, it is intended that the regulations to be made by the Welsh Ministers under the power in section 2 of the Bill will make provision for the enforcement of civil penalties.

## HMCTS Procedural Rules, Sentencing and Penalty Guidelines

- 4.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

Minor amendments may be required to reflect the fact that the current arrangements would also apply to the Offer in Wales. We are currently looking to roll out the new system for Wales in 2020.

- 4.9. Will the proposals require sentencing and / or penalty guidelines to be amended?

Minor amendments may be required to reflect the criminal sanctions to be set out in regulations made under the Bill in relation to Wales. We are currently looking to roll out the new system for Wales in 2020

## 5. Legal Aid and Court Fees

5.1. What evidence is there that individuals affected by your proposal will be able to afford:

- a) legal representation and legal advice in order to secure a fair hearing of their case
- b) associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

Appeals to the First Tier Tribunal are not currently in scope for civil legal aid and could only be funded via Exceptional Case Funding.

Our overall assessment for criminal legal aid is that any impacts for criminal legal aid are negligible.

5.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- Legal aid not available (please provide supporting evidence)

See above.

5.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

Negligible impact.

## 6. Prisons and Offender Management Services

### Impact on HM Prison Services

6.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

There have been no criminal prosecutions in respect of the English Offer and we would expect the number of offenders being committed to custody as a result of the provisions in this Bill to be minimal for reasons explained earlier.

6.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.

No impact on prison and probation as few, if any, prosecutions are likely to be brought each year.

## 7. Main Justice System Impacts Identified

### 7.1. Volumes and Costs or Savings (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Criminal Offences and Sanctions	We have considered this offence as it relates to another area and have concluded that there are likely to be few, if any, prosecutions Act received Royal Assent in 2005.	Prison Place			
		Fixed Penalties			
Civil Penalties	Negligible				
HM Courts & Tribunals Services	1 case per 6 months	Tribunal Hearing	Negligible		

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Welsh Tribunals	N/A				
Legal Aid	Negligible				
Notes:-					
Please see previous sections for more detail.					

**7.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):**

Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs or savings p.a. (£) <sup>1</sup> (please provide numeric estimate and min-max range)
Prison sentence		No impact			
Notes: Please see previous sections for more detail.					

**Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored in to the financial assessment of your legislation.**

<sup>1</sup> The MoJ publish statistics on “Prison cost per place and cost per prisoner:” - see <https://www.gov.uk/government/statistics/announcements/prison-cost-per-place-and-cost-per-prisoner-2017-to-2018>