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Welsh Assembly Government

### **Consultation Document**

## Child Minding and Day Care Regulations

Date of issue: 14 June 2010

Action required: Responses by 6 September 2010

### Child Minding and Day Care Regulations

#### Overview

This consultation is aimed at those working within child care settings as well as those bodies with an interest in child care provision.

Part 2 of the Children and Families (Wales) Measure made new provisions in order to improve the coherence and clarity of child care legislation. This enables us to make the law in these areas more accessible and easier to understand. It also allows us to enhance regulation and enforcement powers, strengthening regulatory enforcement within child care settings.

The resulting first phase of regulations, which are the subject of this consultation, set out the detail of these provisions around child care activities, registration, suspension, supply of information, exemptions, local authority duty, and inspection.

### How to respond

Responses to the consultation questions on page 4 should be e-mailed to cymorth@wales.gsi.gov.uk or posted to the address below. The deadline for submission of comments is

6 September 2010.

# Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

The consultation documents can be found on the Welsh Assembly Government website at www.wales.gov.uk/consultations

The Children and Families (Wales) Measure 2010 can be found on the Office of Public Sector Information website at www.opsi.gov.uk/legislation

The existing child care regulatory framework can be found on the Care and Social Services Inspectorate Wales website at www.wales.gov.uk/cssiwsubsite/newcssiw

### Contact details

For further information:

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### Data protection

### How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Assembly Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Assembly Government staff to help them plan future consultations.

The Welsh Assembly Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Assembly Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

### **Foreword**

The Welsh Assembly Government is committed to the goal of eradicating child poverty by 2020, and improving the life chances of disadvantaged children in Wales. The Children and Families (Wales) Measure made statutory provision to take forward our child poverty commitments, including strengthened regulatory enforcement in childcare settings.

Good quality childcare provision provides many benefits, not just for children, but also for parents, carers, employers, and communities. Recognising this, our Flying Start programme has been making a significant investment in free part-time childcare for two year-olds as part of a wider package of support. Some of the benefits that this care has brought to children has been improvements in language, literacy and numeracy, social development, increased interest in creative activities, and improved behaviour, bringing wider family benefits.

Childcare provision also frees up parents to undertake work and training opportunities.

Parents know how important it is to choose the right childcare, and the Welsh Assembly Government is committed to securing a dedicated, qualified and professional childcare workforce, recognising that a high quality workforce is the bedrock of high quality childcare.

We wish to ensure that childcare is safe, widely available, supports the developmental needs of children and also meets the needs of parents.

The enclosed regulations do not radically change existing childcare registration and inspection arrangements, but provide the opportunity to update and clarify existing child minding and day care regulations.

We hope that you will take the opportunity to consider them carefully, and provide your views so that we can ensure we have a regulatory framework that is fully fit for purpose.



Leighten Andrews.

Leighton Andrews AM Minister for Children, Education and Lifelong Learning



Huw Lewis AM Deputy Minister for Children

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#### What are the main issues?

This document invites comments on the draft Order and Regulations to implement Part 2 - Child Minding and Day Care for Children - of the Children and Families (Wales) Measure 2010 (the Measure), due to come into effect on 1 April 2011.

The aim of this consultation is to make stakeholders aware of the draft Order and the draft Regulations and to provide an opportunity for comment. The Order sets out exceptions where a person whose activity might otherwise come within the definition of child minding or providing day care will not be required to register. The different sets of Regulations deal with (i) the requirements before a person can be registered, (ii) the requirements which must be met once a person is registered, (iii) arrangements by which a person's registration can be suspended (either voluntarily or by the registration authority), (iv) the arrangements for the inspection of child minding and day care provision and (v) the duty on the registration authority to provide information to local authorities about registered providers.

We welcome your views and comments on the issues raised in this consultation paper. We will use your response to inform policy development, guidance and regulations under the Measure. The consultation period ends 6 September 2010. You may wish to circulate this paper locally, to members of your organisation, or to other interested parties.

#### Where are we now?

At present, child minders and other providers of child care for children under the age of eight in Wales are regulated by Part 10A and Schedule 9A of the Children Act 1989 which sets out the registration requirements and ensures the welfare of children in their care.

Since the introduction of regulation of childminders and other providers of childcare for children under the age of eight under the Children Act 1989, comprehensive regulations and national minimum standards have set out the requirements of registration and inspection.

Part 10A of the Children Act was introduced by the Care Standards Act 2000, and transferred the responsibility for childcare registration from local authorities to the Care and Social Services Inspectorate for Wales (CSSIW). The functions are those of Welsh Ministers, and are exercised by CSSIW.

Full details of the regulatory framework can be found on the CSSIW website at www.wales.gov.uk/cssiwsubsite/newcssiw.

#### The evidence

Part 2 of the Measure contains provision which allows the repeal of the existing regulatory framework and makes new provisions with a view to improving coherence and clarity, and to enhance the enforcement powers exercised by CSSIW. Although the majority of the provisions detailed under Part 2 of the Measure closely mirror the current provision made under legislation for childminders and day care providers

registered under the Children Act 1989, they also provide the opportunity to restate, update, and modify the law in a more cohesive way.

Part 2 of the Measure includes provisions to ensure that the full range of regulatory enforcement options are available in respect of all establishments and agencies that Welsh Ministers (through the Care and Social Services Inspectorate Wales) regulate. In addition, amendments have been made to:

- Section 30 Contains powers for the Welsh Ministers to make regulations governing the activities of persons registered under Part 2 of the Measure. This section inserts the new provision at sub section (2) (f) to make explicit that regulations may include requirements on a registered person about dealing with complaints and at (2) (g) to make explicit that regulations may make provision dealing with the supervision of staff. This will help provide clarity around both these areas.
- Section 32

  Contains powers to make regulations to make provision about
  the Suspension of a person's registration. It contains a new provision at
  sub section (2) (c) that regulation may include provision about the
  suspension of registration at the request of the registered person. This
  could include the voluntary suspension of a registered person, for
  example, to cover a career break, maternity leave etc.
- Section 56 Confers power to make regulations to deal with the position where the sole person registered in respect of a day care business dies, and for the carrying on of the service. There is currently no such provision in Part 10A of the Children Act.

The proposed first phase of regulations to be made under the Measure, and which are the subject of this consultation, does not impose any significant new burdens on childminders or providers. The child minding and day care Regulations under existing legislation can remain in place until Part 2 Child Minding and Day Care for Children of the Children and Families (Wales) Measure 2010 is commenced and the suite of regulations upon which we are consulting come into force.

The timing of the introduction of Part 2 is fully in the control of Welsh Ministers, but we recognise the expectation within the sector to see early beneficial changes such as the introduction of the power under section 56 to make regulations to deal with the position where a sole registered person dies or the introduction of the power under section 32 so that a registered person can voluntarily suspend their registration. Those provisions within Part 2 of the Measure which deal with the introduction of fixed penalty notices are not being commenced in this phase of implementation. Fixed penalty notices will have a role in strengthening regulatory enforcement but this part will be implemented after further policy development and an opportunity for further consultation with the sector.

It is the intention that the regulations resulting from this particular commencement phase will, with the small number of exceptions noted herein, remain within the scope of existing legislative provision. In the majority of cases the primary legislation does not allow for the implementation of policy other than that already operating.

### Summary of the proposals

### The Child Minding and Day Care (Wales) Regulations 2010

These Regulations apply to persons who act as child minders or provide day care on premises situated in Wales. They make provision for the registration of child minders and day care providers, and set out the circumstances in which a person's registration may be suspended by the Welsh Ministers and provide for a right of appeal to a First-tier Tribunal. Also included are provisions setting out requirements to ensure the suitability of those persons providing care, the welfare and development of children in their care, record keeping, fitness of premises, and miscellaneous matters.

### The Child Minding and Day Care Exceptions (Wales) Order 2010

This order sets out circumstances in which a person who is engaged in child care activity would be excepted from being a formal 'child minding' or 'day care' provider for regulatory purposes.

### The Child Minding and Day Care Inspection and Disclosure of Information (Wales) Regulations 2010

These Regulations set out both the arrangements for inspection of those providing child minding and day care and also the information which the Welsh Ministers must provide to a local authority when certain steps are taken.

### Responding to the consultation

Before considering the following questions, please first read the further information on the proposed regulatory provisions in Annex 1.

The consultation period ends on 6 September. Responses to be sent to Andrew Carter, Child and Family Programmes, Welsh Assembly Government, 4<sup>th</sup> Floor, Cathays Park, Cardiff, CF10 3NQ. It should be noted that the responses to the consultation will be made public. Normally, the name and address (or part of that address) of the author are published along with the response. If you do not wish to be identified as the author of your response, please state this expressly in your response.

### **Consultation questions**

### The Child Minding and Day Care (Wales) Regulations 2010

- 1. Are the new provisions which set out the requirements of a day care setting upon the death of a registered person adequate is it acceptable to expect notice of a death 'without delay'? Is it also acceptable to require, 'within 14 days', the intentions of the deceased's personal representatives concerning the continuance of the business? Do the provisions provide suitable cover for parents in such an event?
- 2. Is appropriate to remove the requirement contained in the current Regulations for child minders to provide a statement regarding planning permission (which currently requires that childminders produce a statement to evidence planning permission is not required)? Are there any possible unintended consequences or issues that could arise?
- 3. There are new provisions where a registered person can voluntarily apply for the suspension of their registration, is it appropriate that we require that they disclose the reason for this voluntary suspension of their registration? Are there any circumstances under which Welsh Ministers should not accept a notice of voluntary suspension?
- 4. The Regulations require that persons who come into regular contact with relevant children must be suitable. Do you think it would be helpful to define what "regular" means, or is it better left to be determined in accordance with the commonly accepted meaning of the word?
- 5. Do you wish to make any further comments about the suitability of these arrangements for child minders and/or day care providers?

### The Child Minding and Day Care Exceptions (Wales) Order 2010

- 6. Do you agree that existing exemptions form a sound basis for the new arrangements for registration by CSSIW?
- 7. Do you consider the clarification of provisions for those caring for children of no more than two families, in the home of either of the families is helpful? Does this provide an appropriate balance between suitable care for children, and flexibility for parents? Are there any possible unintended consequences or issues that could arise?
- 8. Are the existing provisions which exempt the hours of 6pm-2am to meet the needs of parents who use the services of babysitters, including services provided at places of stay such as a guest house or hotel appropriate?
- 9. Is it appropriate to extend the number of days which a day care setting is allowed to operate without being required to register, from fewer than six to fewer than 14 days in a calendar year? Do you consider that this provides a useful exemption to encourage much needed short-term provision? Is it about the right length of time?

- 10. Are the new provisions, which put on a statutory footing the current practice that excludes from registration persons whose primary purpose is to provide coaching and tuition for children, appropriate? Would it provide greater clarity if the exception was expressed in a fixed way in relation to children under a certain age undertaking activities for a certain length of time each day? For example by saying that where children under five attend premises to do activities for more than five hours in any one day then the provider will always need to be registered.
- 11. Are there any further comments that you wish to make about the Child Minding and Day Care Exceptions (Wales) Order 2010?

### The Child Minding and Day Care Inspection and Disclosure of Information (Wales) Regulations 2010

- 12. The regulations provide for inspection reports of day care providers to be published but for the inspection body to have a discretion about disclosing an inspection report of a childminder to a limited class of persons a parent or former parent of a child looked after, a prospective parent and the local authority for the area in question. Do you agree with the provisions for the sharing of inspection reports?
- 13. Do you feel that the list of information in Schedule1 to be provided to local authorities is appropriate? Is there any further specific information that you feel could usefully be made available to local authorities in addition to those items in Schedule 1?
- 14. Are you satisfied with the provisions in Schedule 2?
- 15. Are there any further comments that you wish to make about the provisions for inspection and/or disclosure of information?
- 16. Are there any related issues which we have not specifically addressed in any of the specific questions above?

### **Regulatory provisions**

### The Child Minding and Day Care (Wales) Regulations 2010

These regulations are made under sections 24, 25, 26, 30, 32, 56 and 74 of the Measure, and combine 3 distinct areas of child care legislation; registration, activities, and suspension.

Within Part 2 of the Measure, sections 20-21, and 24-25 govern the registration of child minders, whilst sections 22-23, and 26-27 concern the registration of day care providers.

Section 30 of the Measure allows Welsh Ministers to make regulations governing the activities of registered persons, including qualifications and training, the keeping of records, and the supervision of staff, etc.

Section 32 of the Measure allows for regulations to be made to set out the circumstances in which a registration may be suspended, including determination of the period for which such a suspension would last.

The regulations combine elements which were previously contained within three separate sets of regulations; the registration of child minding and day care providers, their activities, and the circumstances under which registration would be suspended.

In terms of eligibility for registration, the regulations set out the criteria that must be satisfied for child minders on the one hand and then day care providers. Also detailed are the matters that should be recorded on the certificate of registration. Schedule 1 lists the information and documents that must be supplied to support an application for registration. The former regulatory requirement to provide a statement to confirm that planning permission is either in place, in progress, or not required, has been removed from this Schedule in order to avoid unnecessary burdens to applicants, and to reflect the fact that planning matters fall outside the remit of the child care inspectorate. It is intended, however, that the inspectorate will continue to advise applicants on planning requirements and their responsibilities. Further information on planning matters can be found in 'Planning Permission – A guide for business' at <a href="https://www.wales.gov.uk/topics/planning">www.wales.gov.uk/topics/planning</a>.

Part 2 of the Measure also contains powers for Welsh Ministers to make regulations governing the activities of registered persons. The requirements set out in respect of these activities are contained within separate Parts of the regulations, which make provision concerning; general matters, requirements about registered persons, welfare and development of children, staffing, records and information, and premises. A further part – Miscellaneous – covers compliance, standards, offences, and revocation, saving and amendment, as required, of the existing regulatory provision.

Regulation 12 contains a new provision setting out the requirements of a day care setting upon the death of a registered person. This allows for the carrying on of the child care setting in certain prescribed circumstances.

The final distinct aspect of the regulations are those provisions governing the suspension of registration. Where a person's registration is suspended by CSSIW (acting on behalf of the Welsh Ministers), there is a right of appeal to a First-Tier Tribunal against that decision. There is no corresponding right of appeal to a First-Tier Tribunal in the event that Welsh Ministers refuse to action a voluntary suspension notice submitted by a registered person.

### The Child Minding and Day Care Exceptions (Wales) Order 2010

Powers within the Measure allow Welsh Ministers, by order, to define the circumstances in which childcare providers can be exempt from compulsory registration. Our approach in excluding specific types of childcare provision from compulsory registration has been to carry forward what is working well under the current registration scheme (under the Children Act 1989) and to ensure that any exemptions under the Measure are based on achieving a proportionate approach to regulation, taking full account of how risks to children's safety and well-being are best minimised.

This Order is made under section 19 of the Children and Families (Wales) Measure, which describes what constitutes 'child minding' and 'day care for children'. It clearly defines the circumstances under which a person caring for children would not be required to register for the purposes of the Measure. Part 2 details those exceptions applying to child minders, and Part 3, those applying to day care.

In relation to day care that is only provided for a few days every year, the draft Order (article 11) increases the number of days per year below which registration is not required. Under existing law the requirement to register does not apply where day care is provided on premises for less than six days per year and this is increased to 'less than 14 days a year'. This brings regulation in this area in line with that in England, and allows short term crèches/playschemes to operate without registration, avoiding the need to re-apply annually if the registered person or venue changes.

Article 5 redrafts the existing provision which excludes carers who look after children of up to two sets of parents in their own homes. This is intended to exclude reciprocal arrangements between up to two families where the children are looked after in one or other of the family homes but would also exclude a nanny, for example, from the need to register.

Article 14 of the draft Order introduces a new exception to make clear that persons whose primary purpose is to provide coaching and tuition for children on non-domestic premises are not required to register. In considering what is the primary purpose of an activity, the article requires that consideration is given to the length of time any child will attend at the premises, the age of the children for whom it is available and the nature of the activity. It is intended that this approach will successfully distinguish between activity providers whose main purpose is to provide

day care but with a particular theme (e.g. a playscheme) and those who have a more specific purpose of providing coaching or tuition (for example schools doing performing arts classes).

### The Child Minding and Day Care Inspection and Disclosure of Information (Wales) Regulations 2010

Section 40 of the Measure provides that Welsh Ministers may issue regulations to determine the inspection arrangements for registered child minding and day care provision. It also allows Welsh Ministers to set out arrangements for the publication of inspection reports.

Section 45 requires Welsh Ministers to provide prescribed information to a local authority in relation to a person's registration at the point when a person is registered and also at the point when a person's registration is subject of a notice of intention to cancel, cancellation or suspension.

The regulations define the actions of the inspection body in terms of their requirement to produce a report of any inspection, and to whom the report must be disclosed. It requires that the report be provided to the registered person, and may also be provided to parents and to local authorities.

Schedule 1 details the range of information that must be supplied to a local authority when a registration is granted, suspended or ended. The list of information detailed here expands on that currently shared with Family Information Services, and has been designed to assist local authorities in meeting their further obligations under the Child Care Act 2006.

Schedule 2 sets out the information to be supplied to a local authority when a registration is suspended or ended.

### Annex 2

#### Names of schools consulted

Ysgol Gynradd Brynsiencyn

Ysgol Ffrwd Win

Ysgol Llanfairpwllgwyngyll

Ysgol Gynradd Rhosneigr

Ysgol Gynradd Llandegfan

Ysgol Gynradd Bethel

Ysgol Crud Y Werin

Ysgol Llangybi

Y.G. Rhostryfan

Ysgol Glancegin

Ysgol Bro Tegid

Ysgol Bro Cynfal

Ysgol Y Manod

Ysgol Y Friog

Ysgol Y Faenol

Ysgol Santes Helen

Ysgol Deganwy

Conwy Road Infants School

Ysgol Pant-Y-Rhedyn

Ysgol Capel Garmon

Ysgol Llanddulas Controlled

**Bodnant Infants School** 

**Bodnant Junior School** 

Clocaenog C.P. School

Glyndyfrdwy Community School

Ysgol Bro Cinmeirch

Llantysilio C.I.W. Controlled School

Ysgol Maes Edwin

Mynydd Isa Junior School

Ysgol Rhos Helyg

Hawarden C.P. Infants

Drury C.P. School

Ysgol Parc Y Llan

Nannerch Primary School

Rector Drew V.A. School

Johnstown Junior School

Bwlchgwyn C.P. School

Victoria. Junior School

Borras Park Junior C.P. School

Holt's Community Primary School

St Anne's R.C. Primary School

Banw C.P. School

Llanfair Caereinion C.P.

Ardwyn Nursery and Infant School

Llanfyllin C.P. School

Llanfihangel Rhydithon C.P.

Coelbren C.P. School

Ysgol Rhiw Bechan

Llandrindod Wells C.I.W. School

Llangors V.P. School

Ysgol Gynradd Dihewyd

Y.G. Talgarreg

Ysgol Gynradd Llangwyryfon

Ysgol Gynradd Aberporth

Y.G. Capel Cynon

Ysgol Gynradd Tregaron

Ysgol Gynradd Wirfoddol Mefenydd

Sageston C.P. School

Orielton C.P. School

Ysgol Llanychllwydog

Solva C.P. School

Manorbier V.C.P. School

St Mary's V.R.C. School

Llangain C.P. School

Meidrim C.P. School

Ysgol Gynradd Brechfa

Ysgol Gynradd Hendy Gwyn Ar Daf

Ysgol Y Dderwen

Llangennech Infants School

Lakefield C.P. School

Trimsaran C.P. School

Llanybydder C.P. School

Ysgol Gymraeg Gwenllian

Llanfynydd V.A.P. School

Brynhyfryd Junior School

Gendros Primary School

Manselton Primary School

Sketty Primary School

Portmead Primary School

**Newton Primary School** 

Craigcefnparc Primary School

Penclawdd Primary School

Blaendulais Primary School

Ysgol G.G.D. Cwmgors

**Cwmnedd Primary School** 

Catwg Primary School

Tirmorfa Primary School

**Crynallt Junior School** 

YGGD Y Wern

St Josephs R.C.Primary School

Blaengarw Primary School

**Newton Primary School** 

Plasnewydd Primary School

Ysgol Gymraeg Bro Ogwr

Tremains Infant School

High Street Primary School

Victoria Primary School

Oakfield Primary School

St Nicholas C.I.W. Primary

St Joseph's R.C. Primary School

Rhydyfelin Nursery School

Alaw Primary School

Cymmer Junior School

**Cwmbach Infants School** 

Maerdy Junior School

Pontrhondda Primary School

Ton Pentre Junior School

Williamstown Primary School

Ysgol G. G. Llwyncelyn

Ysgol G.G. Bodringallt

Hendreforgan Primary School

Penyrenglyn Primary School

**Gurnos Nursery School** 

Caedraw Primary School

**Bedlinog Primary School** 

Edwardsville Primary School

St Illtyds R.C.Primary School

**Cwmaber Junior School** 

**Cwmcarn Primary School** 

Llancaeach Junior School

Ysgol Y Lawnt

Maesycwmmer Primary School

Ysgol Gymraeg Bro Allta

Ty Sign Primary School

Glanhowy Primary School

**Briery Hill Primary School** 

Beaufort Hill Primary School

Victoria Primary School

**Greenmeadow Primary School** 

Llanfihangel Crucorney C.P. School

Trellech C.P. School

Usk C.V. Primary School

Gaer Junior School

Malpas Park Primary School

Mount Pleasant Primary

St Joseph's R.C. Primary School

**Grangetown Nursery School** 

Adamsdown Primary School

**Moorland Primary School** 

Caerau Infant School

Pentrebane Primary School

Trowbridge Junior School

Thornhill Primary School

Gladstone Primary

St Cuthbert's R.C. Primary School

St Paul's C.I.W. Primary School

St Bernadette's R.C. Primary School

### Annex 3

#### **Consultation audience**

Voluntary organisations in the childcare sector

Children's Legal Centre

Association of Directors of Education in Wales (ADEW)

Chief Executives of Local Authorities

Association of Directors for Social Services Cymru (ADSS Cymru)

Care Council for Wales

Care Forum Wales

Confederation of British Industry Cymru/Wales (CBI Wales)

Chief Executives of Local Authorities

Local Authority Children & Young People Partnership managers

Local Authority childcare co-ordinators

Children in Wales

Children's Commissioner for Wales

Church in Wales

Catholic Church in Wales

Chwarae Teg

Citizens Advice Bureaux

Directors of Education in Wales

Directors of Social Services in Wales

**Family Information Services** 

Federation of Small Businesses (FSB)

Flying Start Co-ordinators

Fostering Network Wales

Funky Dragon

**Higher Education Funding Council** 

Jobcentre Plus Childcare Partnership Managers

Joseph Rowntree Association

Lead Directors for Children & Young People's Services

Lead Members for Children & Young People's Services

National Foster Carers Association Wales

Wales Council for Voluntary Action (WCVA)

Welsh Language Board

Welsh Local Government Association (WLGA)

Early Years Development and Childcare Partnerships

Local Authority Genesis Wales managers

Commission for Equality and Human Rights

Community Service Volunteers (CSV)

Schools Workload Advisory Panel

**Assembly Members** 

Holiday playscheme providers

Creche providers

Out of school clubs

Sessional care settings

Playgroups

Day nurseries

Childminders

Chief planning authority officers

**Governors Wales** 

Nursery and primary schools

Children's sports and cultural groups