

**Explanatory Memorandum to The Child Minding and Day Care (Wales) Regulations 2010, The Child Minding and Day Care Exceptions (Wales) Order 2010, The Child Minding and Day Care Inspection and Disclosure of Information (Wales) Regulations 2010, and The Children and Families (Wales) Measure 2010 (Commencement No. 2) and (Savings and Transitional Provisions) Order 2010**

This Explanatory Memorandum has been prepared by Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of **The Child Minding and Day Care (Wales) Regulations 2010, The Child Minding and Day Care Exceptions (Wales) Order 2010, The Child Minding and Day Care Inspection and Disclosure of Information (Wales) Regulations 2010, and The Children and Families (Wales) Measure 2010 (Commencement No. 2) and (Savings and Transitional Provisions) Order 2010**, and I am satisfied that the benefits outweigh any costs.

*Huw Lewis AM*  
Deputy Minister for Children

20 October 2010

## **EXPLANATORY MEMORANDUM**

### **1. Description**

- 1.1 The Children and Families (Wales) Measure 2010 (“the Measure”) received Privy Council approval on 10 February 2010. It makes statutory provision to take forward the Assembly Government’s commitment in terms of child poverty, and to take forward its strategy for vulnerable children by bringing forward legislation to provide greater support to families where children may be at risk.
- 1.2 It also enables the use of powers, devolved under the Government of Wales Act 2006, to update existing child minding and day care legislation, and to strengthen regulatory enforcement in childcare settings. This will make the law in these important areas more accessible and easier to understand.
- 1.3 Part 2 (Regulation of Childminding and Day Care) of the Measure does not radically change current childcare registration and inspection arrangements, providing, however, the opportunity to consolidate and improve existing childminding and day care regulations.
- 1.4 At present, child minders and other providers of childcare for children under the age of 8 in Wales are regulated under Part 10A and Schedule 9A of the Children Act 1989.
- 1.5 Part 10A of the Children Act 1989 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).
- 1.6 Since the introduction of regulation of child minders and other providers of childcare for children under the age of 8 under the Children Act 1989, comprehensive regulations and National Minimum Standards (NMS) have set out the requirements of registration and inspection.
- 1.7 Part 2 of the Measure repeals and replaces Part 10A of the Children Act 1989 together with Schedule 9A and makes new provisions with a view to improving coherence and clarity, whilst enhancing the regulation and enforcement powers that are exercised by CSSIW.
- 1.8 In effect, Part 2 of the Measure allows for:-
  - Consolidation of piecemeal amendments made to the Children Act 1989 since 2000, such as the changes to allow registration of unincorporated bodies in 2004 and the updating of references to the First Tier Tribunal which has taken over the functions of the Care Standards Tribunal.

- Inclusion of changes made to the regulatory regime in England, in the Childcare Act 2006, with application of those changes which are appropriate to Wales, such as provision to allow a provider to suspend his or her own registration.
  - Updating of legislative provisions to take account of the changes since the Government of Wales Act 2006, in particular so that the references are to Welsh Ministers instead of the National Assembly for Wales.
- 1.9 All the provisions are now together in the main body of the Measure and set out in a logical way to aid understanding. The re-wording of parts of the legislation should make it easier for childcare providers to understand, and the greater ability to amend sections via regulation will ensure that the legislation continues to be relevant.
- 1.10 The provisions within Part 2 of the Measure do not impact in the ability of persons to register as childminders or day care providers. Neither do they alter provision in respect of inspection of those settings.
- 1.11 This first phase of subordinate legislation to be made under Part 2 of the Measure establishes the regulatory framework around the registration of child minders and day care providers, the scope of their activities, suspension of registration, inspection of provision, disclosure of information to local authorities, and also the types of childcare that are excepted from registration.

## **2. Matters of special interest to the Constitutional Affairs Committee**

- 2.1 The Child Minding and Day Care Exceptions (Wales) Order 2010 is an order subject to the affirmative procedure. The order sets out a number of exceptions to the basic definitions of “child minding” and “day care” so as to exclude from the regulatory scheme a range of care arrangements for children.
- 2.2 There are no further matters of special interest to note.

## **3. Legislative background**

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

- 3.1.1 These regulations are made under powers within sections 24-28, 30, 32, 56 and 74 of the Measure, and combine, for the first time, three distinct areas of childcare legislation; registration, activities, and suspension.

- 3.1.2 These regulations are made under the negative procedure.

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

- 3.2.1 This Order, which follows the affirmative procedure, is made under section 19 of the Measure. This describes what constitutes 'childminding' 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.
- 3.3 The Child Minding and Day Care (Inspection & Information for Local Authorities) (Wales) Regulations 2010
- 3.3.1 These regulations, which are made under the negative procedure, detail provisions for inspection of registered care and reporting of matters inspected. The powers to make these regulations are made under sections 40 and 45(1) of the Measure.
- 3.3.2 They also detail the information to be provided to local authorities upon granting of registration and any subsequent variation of that registration such as cancellation or suspension.
- 3.4 The Children and Families (Wales) Measure 2010 (Commencement No. 2) and (Savings and Transitional Provisions) Order 2010
- 3.4.1 This Order is made under the negative procedure and commences the provisions within Part 2 of the Measure relating to child minding and day care.

#### **4. Purpose and intended effect of the legislation**

- 4.1 Part 2 of the Measure, under which these regulations are derived, repeals and re-enact the provision concerning the regulation of child minders and day care providers, which is currently in Part 10A of the Children Act 1989, together with Schedule 9A. The purpose is to rationalise and simplify the arrangements that currently exist for compulsory childcare registration and inspection, improving coherence and clarity, whilst making new provision to better ensure the wellbeing of children, and to enhance the powers of regulation and enforcement that are exercised on behalf of the Welsh Ministers by CSSIW.
- 4.2 It also aims to ensure that the full range of regulatory enforcement options is available in respect of all establishments and agencies that Welsh Ministers (through CSSIW) regulate.
- 4.3 The majority of the provisions detailed under Part 2 of the proposed Measure are technical in nature and closely mirror the current provision made under legislation for child minders and day care providers registered under the Children Act 1989. With the exception of the enhanced enforcement provisions, the Measure restates and modifies the law in a more cohesive way and does not provide for any significant new burdens on child minders or providers.

- 4.4 The existing legislation is now some years old, and would benefit from being updated to ensure that it is fit for current needs, allows the childcare sector to operate as efficiently as possible, and provides the best framework for safeguarding young children.
- 4.5 The Welsh Assembly Government commissioned Melyn Consulting to undertake a review of the regulatory position. Their report; ***“Review of the Regulations and the National Minimum Standards for Daycare and Childminding”*** (“The Melyn Report”), was published in April 2009.
- 4.6 The report, which has informed the development of the draft regulations which are the subject of this document, made 22 recommendations. However, it was noted that the issues around the regulation and inspection of childcare; “can be contentious with stakeholders often being driven by differing priorities.”
- 4.7 The draft regulations now proposed, as well as improving coherence/clarity, also include some very worthwhile revisions and amendments.
- 4.8 Some of the key changes in the new legislation are:-

Removal of the need for applicants to provide a statement confirming that planning consent is either in place, in progress, or not required for their proposed childcare business. Previously, this requirement had caused problems for child minders in terms of financial costs where they had to secure formal confirmation from their local planning authority that planning consent would not be required, as well as the time and trouble involved in this. The removal of this provision recognises that planning matters fall outside the remit of the childcare inspectorate.

Additional safeguarding provisions. For example, there is new provision to ensure that other persons, aged 16 years and over, who may live or work on the relevant premises, or otherwise be present and may have regular contact with relevant children, are suitable to have such contact.

Arrangements for the continuance of a day care business upon the death of a registered person. This new provision sets out the action to be taken in both circumstances where the deceased was a sole trader, and also where the deceased worked with another person who is also registered in respect of that day care provision. For sole traders, this would allow the childcare setting to continue in certain prescribed circumstances, for up to a year, ensuring that care continues to be available for children whilst, for example, the deceased’s estate is settled. Presently, such circumstances would raise numerous difficult issues such as insurance, where a setting might be continuing to operate illegally, whether parents should try to find alternative care (not always easy in some areas), staffing and security of jobs, as well as the impact on children from the insecurity of their care arrangements.

Suspension of registration. The new provisions will allow for the voluntary suspension of a registration, giving the registered person the opportunity to take a career break, for example. 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 in the event that Welsh Ministers refuse to action a voluntary suspension notice submitted by a registered person. This provision will prevent a registered person under threat of suspension from circumventing such action by submitting a voluntary suspension request in the meantime.

Exemption from regulation of carers who look after the children of up to two sets of parents in the parents' own houses from regulation. This is intended to exclude, for example, the scenario where there may be a mutual arrangement between parents to look after each others children, in turn, whilst they each work different shift arrangements.

Exemption, from regulation, of settings providing coaching or tuition in a sporting or cultural activity, on non-domestic premises. Where the primary purpose of any sporting or cultural provision is to provide coaching or tuition, and any care provided is incidental to this, then such provision would not be required to register. There is a wide and varied range of such provision covering, for example, activities such as dance, music, drama, singing, football, gymnastics, swimming, and cheerleading. It is also recognised that disabled children benefit greatly from a range of dedicated provision. It is not appropriate to impose the burden of the childcare regulatory framework on such provision, where childcare is purely incidental to its main purpose. On the whole such provision is not registered at present but the law in this area lacks clarity. The draft regulations would ensure a clear separation between dedicated coaching/tuition, and provision that is essentially childcare-based, and should therefore be separately regulated as such. This will remove any of the existing ambiguity/doubt around whether or not such provision needs to be registered.

Expansion of the information that must be supplied to a local authority when registration is granted, suspended or ended. The proposed increased schedule of information to be provided to local authorities is intended to assist them in meeting, more efficiently and effectively, their further obligations under the Childcare Act 2006, ie. the duties to undertake childcare sufficiency assessments and to take strategic action to address any gaps in childcare provision for working parents. This more detailed information about the local childcare provider market would assist local authorities in planning and in providing information to parents seeking childcare.

Extension of the time allowed for bringing a prosecution. This provision would allow a prosecution to be brought up to 1 year after sufficient evidence of an offence came to the prosecutor's knowledge.

## **5. Consultation**

- 5.1 In drafting the Regulations and Orders we have consulted with CSSIW in their role as the regulator of childcare in Wales.
- 5.2 A full 12 week public consultation was also undertaken with a wide range of stakeholders.
- 5.3 Details of the public consultation are included in the Regulatory Impact Assessment below.

## **6. Regulatory Impact Assessment (RIA)**

### **Options**

The following three options have been identified in relation to meeting the Assembly Government's childcare regulatory aims:-

- Option 1: Do nothing. Taking no action at all will mean that childcare will simply continue to be regulated in the same manner, under Part 10A and Schedule 9A of the Children Act 1989.
- Option 2: Do minimum. Some revisions could be made to existing regulations to bring them up to date.
- Option 3: Introduce the proposed legislation under the new powers within the Measure.

Option 3 is the preferred choice.

It was not considered that any other option outside of formal regulation would be appropriate, considering the need to ensure that the wellbeing of young children is properly safeguarded.

### Option 1: Do nothing

Under this option the proposed subordinate legislation would not be made.

Should this legislation not be made, child minding and day care would simply continue to be regulated under the existing suite of subordinate legislation, namely:-

- The Child Minding and Day Care (Wales) Regulations 2002
- The Child Minding and Day Care (Wales) (Amendment) Regulations 2002
- The Child Minding and Day Care (Amendment) (Wales) Regulations 2003
- The Suspension of Day Care Providers and Child Minders (Wales) Regulations 2004

This would mean that there would be no change to the current regulatory framework for childcare, and some key new powers under Part 2 of the Measure would remain unused.

The intended revisions to the regulatory framework in order to improve coherence and clarity would not be achieved under this option.

### Option 2: Do minimum

This option could be utilised to make some minor revisions to the existing regulations in order to update them, and to make them clearer where it might be obvious that further clarification would be beneficial.

The primary powers would continue to be Part 10A and Schedule 9A of the Children Act 1989.

It would not be within the scope of this option to make any substantial changes to the regulatory provisions as they currently exist.

Under this light-touch option, it would also not be a worthwhile exercise to combine any of the existing suite of legislation, as this would be resource-intensive.

### Option 3: Introduce the proposed legislation

This option is the most resource-intensive, and would make, relatively, the biggest changes. However, it is important to note that the bulk of the regulatory provisions would remain largely the same as they currently exist, the primary purpose of the proposed changes being to improve coherence and clarity.

This option would replace the existing childcare regulatory framework with new regulations under new primary legislation, ie. the Measure.

It would rationalise the current regulatory framework by combining into one set of subordinate legislation the provisions around registration of childcare providers, their activities, and the suspension of registration.

It would also put in place some new regulatory provisions that do not currently exist. The small number of key changes that have been included in the legislation are intended to enhance the regulation and enforcement powers exercised on behalf of the Welsh Ministers by CSSIW.

This option also best fits with the Child Poverty Strategy for Wales, which closed for consultation on 12 August. The Delivery Plan recognises the dual benefit of childcare for employment and early years development, making it a priority to promote accessible, affordable, and high-quality childcare.

Importantly, this (preferred) option has already been scrutinised exhaustively as part of the Measure process, and, in passing the Measure, support has, effectively, already been provided in principle for further regulation.

The provisions within the suite of regulations proposed under this option, their purpose, and relationship with the Measure, are set out below:-

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

#### **Registered persons**

Sections 20-27 of the Measure govern the duty of child minders and day care providers to register as such, setting out the requirement to provide certain information in support of their application to register. Child minders are described, at section 19, as those who look after one or more children under the age of 8 on domestic premises for reward. Those providing care for children under the age of 8 on non-domestic premises are described as day care providers.

Part 3 of the regulations, along with Schedule 1, set out the requirements that must be satisfied by applicants for registration, and Part 4 and Schedule 2 list the information that must be included within an application. Part 3 of the regulations (sections 6-11) set out the suitability criteria for a registered person, the requirement for a 'person in charge' to be appointed within a day care provision, and the requirement to give notice of any convictions imposed or cautions received for offences committed by prescribed persons.

Regulation 20(2) of these Regulations impose additional safeguards to require the registered person to ensure the suitability of anyone aged 16 and over who either lives or works on the premises or is likely to have regular contact with relevant children.

Section 56 of the Measure provides a new power enabling Welsh Ministers to make regulations to allow the continuance of day care provision, in prescribed circumstances, upon the death of a registered person. Regulation 11 of the Regulations details the procedure to be followed in such circumstances, requiring that notice of death be provided within 14 days. In the case of death of a sole registered person, notice also to be provided within 28 days of the intentions concerning continuance of the childcare business. Regulation 11 (3) and (4) allow for the continuance of a business, by the personal representatives of the deceased, for up to a year from the date of death of the registered person.

Part 4 of the Regulations (regulations 12-19) set out the general requirements of registered persons, including the need to comply with regulations, and observe the NMS. Also covered here is the requirement to review and improve the quality of care, to comply with any request from Welsh Ministers to assess the service provided to children.

#### **Regulations governing activities**

Part 5 of the Regulations (regulations 20-38) detail matters of child welfare and development, the provision of food and the implementation of child protection and behaviour management policies. Also covered here are provisions around

the suitability of staff working for registered persons, the keeping of records and provision of information to parents, and the fitness of premises.

Section 30 of the Measure inserts the new provision at sub section (2) (f) that regulations may set out the procedures for dealing with complaints and at (2) (g) that regulations may make provision to deal with the supervision of staff.

The procedure for complaints is set out in regulations 32-36 of the Regulations. These establish that a written system for handling complaints must be in place and must be operated with the principle that the welfare of the child is safeguarded and promoted. Details of both local and formal resolution of complaints must be provided to CSSIW. This follows the intent of the Assembly Government document: *Listening and Learning: A guide to handling complaints and representations in local authority social services in Wales*, which set out two key messages; everyone who makes a complaint about social services provision has a right to be listened to properly, with their best interests safeguarded and promoted, and; complaints can highlight where services need to be changed.

Local resolution of a complaint occurs when the complainant raises an issue directly with the service provider, and a satisfactory resolution can be reached. Formal resolution occurs when the complainant raises an issue with the relevant authority (CSSIW in this instance) and a formal investigation is undertaken in order to resolve the complaint.

Regulation 29 (3) (a) requires that all employees who look after children must receive appropriate training, supervision and appraisal. This formalises existing good practice and will help address CSSIW concerns that childminding assistants should not be left in sole charge of children.

### **Suspension of registration**

Section 32 of the Measure inserts new provision at sub-section (2) (c) that regulations 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.

Part 6 of the Regulations establishes the procedures for suspension, setting out the powers of Welsh Ministers, the period of suspension, notification and notice provisions, lifting of suspension, right of appeal, and arrangements for voluntary suspension. With regard to the latter, regulation 46 (4) (a) provides that Welsh Ministers must not accept notice of voluntary suspension where they have sent, or are in the process of issuing, a notice of decision to suspend registration. This effectively prevents a registered person from pre-empting a formal decision to suspend their registration.

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

This Order is made under sections 19(4) and (5) and section 74(2) of the Measure. Section 19 allows that Welsh Ministers may set out the circumstances under which a person is not providing childcare.

Articles 3-7 of this Order describes the circumstances under which a person who looks after a child under 8 would not be considered to be acting as a child minder, and articles 9-15 describe the circumstances under which a person providing care for children under 8, on non-domestic premises, would not be providing day care.

Article 5 provides that a person who looks after up to two children, in the home of either of the children, is not acting as a child minder. This exemption would allow a nanny to care for children without needing to register. Article 7 provides an exception where the person providing the care is a friend of the parent, and receives no payment for doing so.

Recognising the type of care that baby sitters would provide, for examples, section 6 confirms that care provided between the hours of 6pm and 2am is exempt from registration.

A further new provision, at article 15, clarifies that day care is not provided where the primary purpose is coaching or tuition in a sporting or cultural activity. This is intended to distinguish between provision that is dedicated to coaching children in a particular activity, and provision that, on the other hand, exists predominately to provide childcare. It acknowledges that it is inappropriate to impose the childcare regulatory framework on activities that happen to provide a level of childcare that is merely incidental to the main purpose of that activity.

Guidance on the safeguarding and protection of children has been clearly established by the Assembly Government in *Safeguarding Children: Working Together Under the Children Act 2004*. This sets out the roles and responsibilities of local agencies to safeguard and promote the welfare of children, and applies to all services provided to them, regardless of whether such provision is subject to regulation within the scope of the Child Minding and Day Care Regulations or otherwise. Therefore, for provision that is excepted from regulation according to the provisions of the Child Minding and Day Care Exceptions (Wales) Order 2010, the welfare of children must still be safeguarded (as outlined within the *Working Together* guidance), and would not in any way be compromised by so being excepted. The exception merely recognises that it is not appropriate to regulate, as formal childcare, every type of childcare provision, or provision that happens to provide an element of childcare within its remit.

#### Child Minding and Day Care (Inspection and Information for Local Authorities) (Wales) Regulations 2010

Section 40 of the Measure allows Welsh Ministers to make regulations concerning the arrangement for the inspection of child minding and day care provision. Section 45(1) sets out that Welsh Ministers must provide prescribed information to local authorities concerning the registration of such provision. Section 74(2) sets out the extent of regulation making powers.

Regulation 2 provides that inspection of child minding and day care can be carried out both by the Welsh Ministers and by Her Majesty's Chief Inspector of Education and Training in Wales and that when they do so they must produce a report in writing and send it to the registered person.

Schedule 1 of these Regulations detail the specific information to be supplied to local authorities upon granting of a registration. This includes such information as the address of the premises, and the number and ages of children cared for. Also to be provided is any other information that may assist a local authority in meeting its Childcare Act 2006 (s.27) duty to provide information or assistance to those wishing to use child minding or day care provision.

Schedule 2 details the information to be provided by Welsh Ministers when ending or suspending a registration.

### The Children and Families (Wales) Measure 2010 (Commencement No. 2) and (Savings and Transitional Provisions) Order 2010

This Order establishes the date that provisions within sections 19-56, and 72-73 come into force.

Schedule 1 sets out the savings (ie. those matters not affected by the Order) for specified actions undertaken before the provisions of the Measure are brought into force.

Schedule 2 establishes the framework for transition from the current regulatory provisions to the new legislation.

## **Costs & benefits**

### **Option 1: Do nothing**

#### Costs

This option would generate no additional financial costs to either the childcare sector, or stakeholders such as the national childcare umbrella organisations (voluntary), local or central government.

There would be a potential cost in terms of a failure to put in place more thorough safeguarding provisions for children.

Additionally, the proposed regulations increase clarity and allow for some streamlining and a reduction in bureaucracy, all of which would reduce burdens, and hence costs, on the sector. The cost of not taking forward the legislation would be a loss of these benefits and savings.

#### Benefits

This option brings no tangible benefits to parents and their children using childcare services.

However, as the regulatory framework would continue as it has done for several years, under existing primary powers, childcare providers would benefit from not having to adapt to any changes. Such changes may be seen in terms of resource time devoted to familiarisation with any legislative changes.

The greatest benefit, or saving, would be conferred on CSSIW and Assembly Government. Both bodies would avoid any resource costs associated with developing amendments to the regulatory framework, and consequent costs of cascading advice/guidance to all relevant stakeholders.

CSSIW would benefit from not having to re-train front-line inspectors. It is, of course, essential that inspectors remain fully up-to-date on legislation governing childcare provision, and CSSIW would need to ensure that any changes to legislation were carefully and thoroughly communicated to all staff concerned in the inspection process.

Also to benefit from this option would be the third-sector childcare umbrella bodies, who would not be put to the trouble and cost of changing their guidance, updating their websites, and cascading information to members to guide them through any legislative changes.

## **Option 2: Do minimum**

### Costs

This option requires only some revision to the existing subordinate legislation to ensure that all references are up-to-date, and to ensure clarity where simple amendments could be beneficially made.

There would be some resource implications for Assembly Government in revising and amending the existing legislation. There would also be resource implications for CSSIW in amending documentation to reflect amendments.

Assembly Government and CSSIW officials would need to put resources in place to discuss and prioritise those elements of the existing regulations that would need amendment.

Resources within Assembly Government and CSSIW would also be needed to publicise amendments to the subordinate legislation.

Ultimately, the costs of negotiating, developing and publicising minor amendments to the existing regulations would be likely to be equivalent to the costs of developing entirely new regulations under the Measure powers (as per option 3).

As little would be changing, and the existing legislation would remain in place, the costs to the childcare sector of adapting to any legislative revisions would be small.

## Benefits

The key benefits of this option would be that the existing childcare regulatory framework could be revised to bring it up to date.

The childcare sector would not have to adapt itself to any broader legislative changes, therefore not having to bear any significant costs, and, being familiar with the current regulatory framework, would be able to quickly assimilate any minor changes to this.

There would be no need for either the Assembly Government, CSSIW, or any of the national childcare bodies to undertake a comprehensive update of their materials to change all references over to the new legislative framework, or to undertake any awareness-raising exercises, all of which would have resource implications.

### **Option 3: Introduce the proposed legislation**

#### Costs

Although only small, this option would be, relatively, the most resource-intensive for all stakeholders across all of the options in terms of adapting to regulatory changes.

Part 2 of the Measure, and the subordinate legislation now proposed, is a consolidation and reform of the law, and does not create any new financial burdens on either providers of childcare, on users, or on the regulator.

However, there would be a small resource cost to CSSIW, who would need to undertake an information exercise to ensure that local inspectors are aware of the legislative changes and understand the new provisions. This could, on the whole, be addressed by a single information day for all area team managers at their mid-Wales office, with the development of guidance and some further ongoing support from head office as required whilst the new legislation became embedded. CSSIW would also need to amend all documentation that refers to the former regulatory framework and would need to amend existing registration, inspection and reporting templates to include reference to the new regulations.

The national childcare voluntary bodies would need to amend all their own materials that contain any references to the current legislative framework, which would incur a resource cost.

Childcare providers would need to be aware of the new regulatory framework so that they can ensure that they are operating within the law. A communication exercise would need to be undertaken to ensure that the message reached registered providers. As the consultation exercise revealed that there was much misunderstanding, it is considered that the most effective way of clearly communicating the regulatory provisions would be by issuing statutory guidance to all providers, setting out the changes and confirming the transition arrangements. Details of where the legislation can be found on the internet

could also be provided along with information on obtaining hard copies through The Stationery Office. The charge to a registered provider for a hard copy of The Child Minding and Day Care (Wales) Regulations 2010 is likely to be £9.75 plus £3.75 p&p. It is felt that the cost to Assembly Government of drafting and translating guidance could be met from within existing resources, whilst the cost of printing enough copies is estimated to be in the region of £6,000.00 - £7,000.00. Distribution of this guidance to all registered providers would be an additional cost in the region of £7,000.00 - £9,000.00.

The actual costs to the childcare sector of having to comply with new legislative provisions would be very difficult to quantify. However, registered providers would, on the whole, simply need to ensure that they devote the time to familiarising themselves with the new provisions. Some small resource would also need to be invested to ensure compliance with additional safeguarding provisions. For instance, in checking the suitability of others who may be present on the premises. However, the provisions also allow for a reduction in the burdens on the sector, and this would certainly offset any resource costs.

The costs of monitoring adherence to the regulatory provisions falls to CSSIW. However, it is not expected that the regulatory changes would lead to any tangible increase in work for CSSIW inspection staff, once they were familiar with the new provisions.

### Benefits

A new and fully up-to-date childcare regulatory framework, under new Welsh primary powers, would be in place, ensuring that the best possible safeguards exist for the wellbeing of children in Wales.

Bringing all of the key legislative provisions together would aid communication and bring clarity for both existing and prospective providers as well as CSSIW.

New provisions would be introduced which would help to reduce unnecessary burdens, and hence costs, on childcare providers, ultimately encouraging childcare provision to be established, for instance, by extending the period for which short-term playschemes and crèches can operate without the need to register.

Clarity around the position on the need for planning permission would be greatly welcomed by potential childcare providers who will find it much easier to understand the process that they would need to go through, saving them money, time and trouble in researching and negotiating with different parties in order to confirm their obligations. This new provision will also benefit CSSIW and Assembly Government through a reduction in the time spent facilitating the way around planning issues that have arisen historically.

The new provisions around suspension of registration would allow a person to voluntarily suspend their registration. This would save them costs they would otherwise be spending to maintain their registration, such as the need for insurance. In addition, CSSIW would benefit from resource savings by not having to inspect, for instance.

The process to be followed in the event of the death of a registered person would be clearly established, enabling childcare provision to continue, under certain circumstances, whilst matters relating to the deceased's estate are settled.

The circumstances in which the provision of childcare would not attract the requirements of compulsory registration would be more clearly defined, thereby reducing regulatory burdens on providers, and simplifying existing arrangements for the benefit of parents and providers.

Local authorities would have access to more detailed information about registered childcare provision in their areas, helping them to meet their Childcare Act 2006 duties. The information would assist local authorities to better establish where the childcare gaps are, and, therefore, what interventions might be necessary to help address such gaps in provision.

## **Summary**

The recommended option is to proceed to introduce the full proposed legislation (option 3).

Doing nothing (option 1) would be very difficult to justify in terms of safeguarding the wellbeing of children. Although the existing regulatory framework would continue if no action was taken, this is now some years out of date and requires an overhaul to ensure that it is fully fit for purpose.

Updating the existing regulations, as per option 2, would require some resource investment, although this is likely to be smaller (although not significantly) than that required to develop entirely new regulations under the Measure.

The proposed changes would ensure the best safeguards are in place for children in day care settings or being looked after by childminders. Although the most resource-intensive option, relative to the other two, the investment required to prepare and introduce the legislation would still be small. The primary legislation is already in place and so the bulk of the costs in preparing for a new legislative framework for childcare have already been sunk.

Option 3, therefore, would not require any significant costs to introduce, but would make the most beneficial changes in terms of children's safeguards and reduction in bureaucracy, ultimately bringing savings to the sector.

## **Consultation**

A full 12 week consultation on the draft regulations took place between 14 June 2010 and 6 September 2010 [Note: the consultation did not include within its scope The Children and Families (Wales) Measure 2010 (Commencement No. 2) and (Savings and Transitional Provisions) Order 2010. This is because this

Order is mainly procedural, and it was therefore considered that there would be little value in seeking the views of consultees on its provisions].

The consultation was issued electronically to a wide range of stakeholders (more than 850 in total), including relevant Assembly Government policy officials, registered childcare providers (337), local authorities, voluntary organisations, sporting and cultural groups (63), and schools (147), see Annex B for full list. The consultation was also made available on the Assembly Government website.

All those consulted were, to varying degrees, stakeholders in the childcare sector.

In total, 26 responses were received. These break-down into the following categories:-

*Sector voluntary organisations – 7*  
*Local authorities – 11*  
*Schools – 1*  
*Children’s centres – 3*  
*Government bodies/agencies/associations – 3*  
*Childcare providers - 1*

Numerous issues were raised by respondents, with several clear areas of shared concern. Some respondents were dissatisfied that not all of the recommendations of the Melyn report had been taken forward in the legislation, particularly around the universal regulation of all childcare provision. There was also a perceived need to more clearly define some references such as ‘regular contact’, and ‘from time to time’. The majority of issues raised centred around the provisions for exemption of certain types of care, with 64% of those who did respond expressing that they were unsatisfied with the proposed arrangements generally.

It was clear from the consultation that there was a lot of confusion about the relationship between regulation and NMS. It was also clear from some of the responses that different groups of respondents had different/conflicting priorities.

As a result of the consultation, several revisions have been made to the legislation, as well as the NMS, and a clear need for the development of guidance has emerged.

The full consultation analysis, including details of the revisions that have subsequently been made to the draft legislation, is available at Annex A.

## **Competition Assessment**

A competition questionnaire has been completed, and no impact was recorded for the competition considerations.

The exemption of carers who look after children of up to two sets of parents in their own houses is unlikely to have any impact on competition. In the case of reciprocal childcare arrangements, these would continue as they already do, and there would be no further impact on registered provision. Parents entering into such arrangements are likely to do so in where cost savings are a priority, and where unsocial working arrangements would create a difficulty in securing standard childcare provision. Such parents would not, therefore, necessarily choose paid-for, registered, childcare.

In the matter of coaching/tuition in sporting or cultural activities, the regulations simply describe, for the first time, an understanding that already exists. This provision, therefore, would also have no impact on competition as it would not lead to any changes in market structure.

In summary, therefore, the new regulations do not make any significant changes to the structure of the regulatory burden across the childcare market. Therefore, no competition issues are considered to arise.

### **Post implementation review**

Assembly officials will continue to work closely with counterparts within CSSIW to assess whether the legislative framework is continuing to meet the needs of all stakeholders.

Officials will evaluate the effectiveness of any new or amended regulations made under the Measure within the first 24 months of operation. Following this evaluation we will consider further revision of the regulations if the need for change is identified.

The inspection process itself will also provide a means of monitoring standards and ensuring that the legislative framework is fully fit for purpose and is meeting needs and expectations.

## Summary of consultation responses

### Introduction

A full 12 week consultation on the draft regulations took place between 14 June 2010 and 6 September 2010<sup>1</sup>.

The consultation was issued electronically to a wide range of stakeholders (more than 850 in total), including relevant Assembly Government policy officials, registered childcare providers (337), local authorities, voluntary organisations, sporting and cultural groups (63), and schools (147). A full list is provided at **Annex B**. The consultation was also made available on the Assembly Government website.

All those consulted were, to varying degrees, stakeholders in the childcare sector.

In total, 26 responses were received. These break-down into the following categories:-

*Sector voluntary organisations – 7*  
*Local authorities – 11*  
*Schools – 1*  
*Children's centres – 3*  
*Government bodies/agencies/associations – 3*  
*Childcare providers – 1*

A list of respondents (where permission has been given to disclose this information) can be found at **Annex C**.

### Detailed summary of consultation responses

Not all of the respondents commented on every question that was posed in the consultation document. Some of the responses are a collation of sector stakeholder comments. Some respondents did not provide direct 'yes' or 'no' answers to each consultation question. In these circumstances, every effort has been made to interpret and include the respondent's intended viewpoint in the figures quoted in this summary.

### General Response

Welsh Assembly Government officials will evaluate the effectiveness of any new or amended regulations made under the Children and Families (Wales) Measure 2010 within the first 24 months of operation. Following this evaluation

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<sup>1</sup> Note: the consultation did not include within its scope The Children and Families (Wales) Measure 2010 (Commencement No. 2) and (Savings and Transitional Provisions) Order 2010. This is because this Order is mainly procedural, and it was therefore considered that there would be little value in seeking the views of consultees on its provisions.

we will consider further revision of the regulations if the need for change is identified.

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

### **Question 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?**

1.1. Of the 20 responses to this question, 12 (60%) indicated agreement to the proposed new provisions within the regulations. A number of respondents suggested that arrangements should be set in place to ensure those with an interest are made aware of what would happen in the event of the death of the registered person.

### **Response**

1.2. There is clear support for the proposed new provisions relating to the death of a registered person. The consultation comments have demonstrated that there is a need for the Assembly Government to develop guidance to accompany the new regulations to ensure clarity for stakeholders. As part of this process, Assembly Government officials in conjunction with key sector stakeholders, are developing revised National Minimum Standards (NMS). Many of the concerns that respondents have raised will be addressed through the process of revising the NMS and the guidance will clarify the distinct roles of legislation and the Standards.

### **Question 2**

**Is it appropriate to remove the requirement contained in the current Regulations for childminders 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?**

2.1. Of the 20 responses to this question, 14 (70%) expressed support for the removal of the requirement in the current regulations for childminders to provide a statement regarding planning permission. However, several respondents commented on the continued need to ensure that prospective childminders are reminded to check their particular circumstances with the appropriate planning authority to ensure compliance with planning law and to avoid delays to their child minding registration.

2.2. A number of respondents raised concerns in relation to local planning matters, including requests for clarity of requirements and consistency of approach across Wales.

## Response

2.3. There is clear support for this requirement on prospective childminders to be removed from legislation. The consultation comments have demonstrated that there is a need for the Assembly Government to develop guidance to accompany the new regulations to ensure clarity for stakeholders. Applicants must still comply with any additional legislation relevant to their proposed business arrangements, which includes establishing whether planning permission is needed for childminding at home. CSSIW's role will be to point applicants to their local planning authority to ensure that they establish whether they are required to seek any planning permissions.

2.4. It would be outside the remit of these regulations to influence planning law, and it remains a matter for local planning authorities to consider whether planning permission should be required for an individual to use their home for childminding purposes. The Welsh Assembly Government issued "*Planning Permission: A Guide for Business*" in 2007 which provides guidance on when planning permission is required, how to make a planning application and what happens afterwards.

### Question 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?**

3.1. Of the 20 responses to this question, 18 (90%) indicated agreement to the proposed requirement to disclose the reason for seeking voluntary suspension, with some respondents calling for confidentiality to be taken into account. Some respondents outlined circumstances where Welsh Ministers should not accept a notice of voluntary registration. These included concerns that voluntary suspension could be sought as a way of avoiding inspections or more serious action.

## Response

3.2. There is clear and strong support for the new provisions proposed in respect of voluntary suspension. The consultation comments have demonstrated that there is a need for the Assembly Government to develop guidance to accompany the new regulations to ensure clarity for stakeholders. As part of this process, Assembly Government officials in conjunction with key sector stakeholders, are developing revised National Minimum Standards (NMS). Many of the concerns that respondents have raised will be addressed through the process of revising the NMS and the guidance will clarify the distinct roles of legislation and the Standards.

### Question 4

**The Regulations require that persons who come into regular contact with relevant children must be suitable. Do you think that 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?**

4.1. Of the 21 responses to this question, 17 (81%) expressed clear agreement that "regular" should be defined within the Regulations. A small number of respondents considered that the words "relevant" and "regular" should not be used in a regulatory framework for interpretation reasons. A small number expressed clear disagreement to the suggestion to provide a definition for the reasons that to do so may have the effect of being too prescriptive and that it would be confusing to introduce further terminology, in addition to Independent Safeguarding Authority (ISA) definitions.

### **Response**

4.2 In the light of the announcement by central Government of the intention to undertake a review of the criminal records and vetting and barring regime, which was made on the day following the launch of this consultation, it is not appropriate to consider any further changes to definitions within the regulations at this stage. The regulations make it a requirement for applicants to provide their ISA number and therefore, it will be taken for granted that applicants will have met the criteria set out by the "Vetting and Barring Scheme". It may be appropriate to revisit this issue once the result of the review is known.

### **Question 5**

**Do you wish to make any further comments about the suitability of these arrangements for childminders and/or day care providers?**

5.1. Respondents raised a broad range of issues for consideration, including those that are addressed in the response below.

### **Response**

#### **Guidance and National Minimum Standards**

5.2. The consultation comments have demonstrated that there is a need for the Assembly Government to develop guidance to accompany the new regulations to ensure clarity for stakeholders. As part of this process, Assembly Government officials in conjunction with key sector stakeholders, are developing revised National Minimum Standards (NMS). Many of the concerns that respondents have raised will be addressed through the process of revising the NMS and the guidance will clarify the distinct roles of legislation and the Standards.

#### **Voluntary Childcare Approval Scheme**

5.3. Arrangements for a voluntary childcare approval scheme, which would enable providers to demonstrate to parents/carers who use their services that they meet minimum requirements relating to staff, premises and provisions designed to safeguard children, are under consideration. The establishment of such a scheme would also enable parents to benefit from employer-supported childcare voucher schemes and the Working Tax Credit childcare element.

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

### **Question 6**

**Do you agree that existing exemptions form a sound basis for the new arrangements for registration by CSSIW?**

6.1. Of the 22 responses received to this question, 14 (67%) were dissatisfied with the exemption arrangements whilst 6 respondents (27%) agreed with them.

6.2. A number of respondents called for all childcare provision to be regulated, including that operating for fewer than two hours or on less than 6 days per year. Several suggested the introduction of a lighter touch compulsory or voluntary registration scheme for provision for those aged eight to fourteen (and up to age 17 for settings catering for disabled children). There were calls for providers of mobile crèche provision to be registered, as opposed to the relevant premises, and for exceptions to be more detailed, to provide differentiation between childcare, and other types of settings that provide activities such as coaching and tuition.

### **Response**

6.3. To further clarify the circumstances in which the exception in relation to coaching or tuition applies, the draft Order has been amended (Article 15). This has the effect of setting some firmer requirements around age of child and activities provided in relation to eligibility for registration.

6.4. The issue of universal regulation of all types of childcare must be considered against the principle of proportionality as outlined in the “Inspection, Audit and Regulations in Wales Policy Statement” published by the Welsh Assembly Government in September 2009, which includes having regard to risk, scope for improvement, likely benefit and the interests of citizens.

6.5. The regulatory framework must strike a balance between the need to ensure an appropriate level of safeguarding against the need to allow parents the freedom to exercise their judgement in relation to care arrangements for their children.

6.6. Arrangements for a voluntary childcare approval scheme, which would enable providers to demonstrate to parents/carers who use their services that they meet minimum requirements relating to staff, premises and provisions designed to safeguard children, are under consideration. The establishment of such a scheme would also enable parents to benefit from employer-supported childcare voucher schemes and the Working Tax Credit childcare element.

### **Question 7**

**Do you consider the clarifications 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?**

7.1. Of the 19 responses to this question, 11 (58%) considered that there should be further clarification of the provisions within the draft Order. Several reported consequences that were unintended and stated that reciprocal arrangements were not effectively covered within the draft Order.

**Response**

7.2. The draft Order has been amended to clarify the exception in respect of childcare provided by an individual employed by parents to look after children in the parents' own home such as a nanny or an au pair (Article 5). We have also included a new provision for further clarity, which specifically covers the situation where a person looks after the children of a friend and where no payment is made (Article 7).

7.3. The consultation comments have demonstrated that there is a need for the Assembly Government to develop guidance to accompany the new regulations to ensure clarity for stakeholders. As part of this process, Assembly Government officials in conjunction with key sector stakeholders, are developing revised National Minimum Standards (NMS). Many of the concerns that respondents have raised will be addressed through the process of revising the NMS and the guidance will clarify the distinct roles of legislation and the Standards.

**Question 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 guest house or hotel appropriate?**

8.1. Of the 21 responses to this question, 14 (67%) disagreed and 5 respondents (24%) answered 'yes'.

8.2. A total of 15 (71%) commented that guest house/hotel "babysitting" services (where the intention is to provide childcare) should be subject to regulation. A small number of respondents called for a national system of registration for those caring for children in the child's home (including babysitters) or agency registration to ensure quality and suitability of carer.

**Response**

8.3. We have amended the draft Order to provide clarity of the law within the exception that covers care between 6pm and 2am at hotel, guest house and similar establishments, to set limits and to it make clear where arrangements are required to be registered and where registration is not required (Article 13). This has previously been a 'grey area'.

8.4. The provision which exempts the hours of 6pm-2am to meet the needs of parents who use the services of babysitters is not a new one. In selecting a

babysitter and making a judgement about suitability, a parent/carer is exercising their right to parental choice.

8.5. The issue of universal regulation of all types of childcare must be considered against the principle of proportionality as outlined in the “Inspection, Audit and Regulations in Wales Policy Statement” published by the Welsh Assembly Government in September 2009, which includes having regard to risk, scope for improvement, likely benefit and the interests of citizens.

### **Question 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 6 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?**

9.1. Of the 21 responses received to this question, 15 (71%) disagreed that the number of days that a setting is allowed to operate without being registered should be extended to "fewer than 14 days" in a calendar year. A total of 6 respondents (29%) answered 'yes' to the question.

9.2. The reasons that respondents provided for not supporting the proposed extension were related to safeguarding implications; concerns that National Minimum Standards and childcare-related Tax Credits would not apply to such provision; preference for regulation for all settings regardless of numbers of sessions or hours of operation; and detrimental effect on numbers attending registered provision.

9.3. Those in agreement to extending the period of exception, commented that this would assist the delivery of mobile crèches that support training provision and encourage "much needed" short-term provision, including the development of community-led play provision.

### **Response**

9.4. We have amended the draft Order to the effect that the duration of this exception will remain at the current level of “fewer than 6 days” (Article 9).

### **Question 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 5 attend premises to do activities for more than 5 hours in any one day, then the provider will always need to be registered.**

10.1. Of the 20 responses to this question, 11 (55%), gave a 'no' response and 8 (40%) answered 'yes'.

10.2. Those that disagreed, expressed concerns: that the exception could be open to interpretation and that clarity is required; and that all persons providing care, even where the primary purpose is to provide coaching and tuition, should be subject to some form of registration. Other concerns were that there was a possibility that providers could use the exception to offer cheaper provision to the detriment of registered provision; and that awareness of parents/carers should be raised in respect of regulatory requirements to ensure informed choice.

10.3. Respondents also indicated that clarity in relation to requirements for persons providing provision where the primary purpose is to provide coaching and tuition would be welcomed.

### **Response**

10.4. The draft Order has been amended to clarify further the circumstances in which the exception in relation to coaching or tuition applies (Article 15). This has the effect of setting some firmer requirements around age of child and activities provided in relation to eligibility for registration.

10.5. The issue of universal regulation of all types of childcare must be considered against the principle of proportionality as outlined in the “Inspection, Audit and Regulations in Wales Policy Statement” published by the Welsh Assembly Government in September 2009, which includes having regard to risk, scope for improvement, likely benefit and the interests of citizens.

10.6. Arrangements for a voluntary childcare approval scheme, which would enable providers to demonstrate to parents/carers who use their services that they meet minimum requirements relating to staff, premises and provisions designed to safeguard children, are under consideration. The establishment of such a scheme would also enable parents to benefit from employer-supported childcare voucher schemes and the Working Tax Credit childcare element.

### **Question 11**

**Are there any further comments that you wish to make about the Child Minding and Day Care Exceptions (Wales) Order 2010?**

11. 1. Respondents raised a range of issues, including those that are addressed in the response below.

### **Response**

11.2. The articles within the draft Order have been re-ordered for greater clarity so that general types of exception are followed by the more specific types.

11.3. The issue of universal regulation of all types of childcare must be considered against the principle of proportionality as outlined in the “Inspection, Audit and Regulations in Wales Policy Statement” published by the Welsh

Assembly Government in September 2009, which includes having regard to risk, scope for improvement, likely benefit and the interests of citizens.

11.4. Arrangements for a voluntary childcare approval scheme, which would enable providers to demonstrate to parents/carers who use their services that they meet minimum requirements relating to staff, premises and provisions designed to safeguard children, are under consideration. The establishment of such a scheme would also enable parents to benefit from employer-supported childcare voucher schemes and the Working Tax Credit childcare element.

### **Child Minding and Day Care (Inspection and Information for Local Authorities) (Wales) Regulations 2010**

#### **Question 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?**

12.1. Of the 21 responses to this question, 13 (62%) gave a direct 'yes' response and 3 (14%) a direct 'no' response. Within their comments, 7 (33%) respondents indicated that childminders' personal and identifiable information should not be published to ensure the safeguarding of the children being cared for and their families, as well as that of childminders and their families.

12.2. Several respondents expressed the opinion that the inspection reports of all childcare businesses should be available in their entirety to the general public to ensure transparency and to inform parental choice in choosing appropriate childcare. A small number of respondents felt that inspection reports of all childcare businesses should be available for public scrutiny on request and on the CSSIW website, with personal information withheld.

#### **Response**

12.3. The consultation comments have demonstrated that there is a need for the Assembly Government to develop guidance to accompany the new regulations to ensure clarity for stakeholders. As part of this process, Assembly Government officials in conjunction with key sector stakeholders, are developing revised National Minimum Standards (NMS). Many of the concerns that respondents have raised will be addressed through the process of revising the NMS and the guidance will clarify the distinct roles of legislation and the Standards.

#### **Question 13**

**Do you feel that the list of information in Schedule 1 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?**

13.1. Of the 20 responses to this question, 12 (60%) gave a direct 'yes' response and 2 (10%) a direct 'no'. Other respondents provided comments or requests for additional information to be provided to local authorities, including the email addresses of providers and further information of the services they offer.

13.2. Some respondents called for the information to be aligned with the childcare sufficiency requirements of the Childcare Act 2006, and for clarity with regard to the definition of the different types of childcare to ensure consistency of approach.

### **Response**

13.3. Once the new regulations are agreed in Plenary, CSSIW will commence its implementation plan which includes training for inspectors and other staff on the new legislative framework. The implementation by inspectors and regions will be monitored for consistency and adherence to the legislation.

13.4. The consultation comments have demonstrated that there is a need for the Assembly Government to develop guidance to accompany the new regulations to ensure clarity for stakeholders. As part of this process, Assembly Government officials in conjunction with key sector stakeholders, are developing revised National Minimum Standards (NMS). Many of the concerns that respondents have raised will be addressed through the process of revising the NMS and the guidance will clarify the distinct roles of legislation and the Standards.

### **Question 14**

#### **Are you satisfied with the provisions in Schedule 2?**

14.1. Of the 20 responses to this question, 15 respondents (75%) answered 'yes' to the question and 4 (20%) disagreed, calling for the reasons for voluntary or enforced de-registration of childminders to be supplied to local authorities; and for sharing of information between local authorities to ensure that previous history is available should a de-registered person attempt to seek registration in a new area.

### **Response**

14.2. It would fall outside the scope of this legislative provision to do more than what is provided for within the regulations as drafted. The purpose of this information is to allow local authorities to fulfil their duties under the Childcare Act 2006.

### **Question 15**

#### **Are there any other further comments that you wish to make about the provisions for inspection and/or disclosure of information?**

15.1. Respondents raised several issues, including those that are addressed in the response below.

### **Response**

15.2. In response to the request for CSSIW to inform local authorities of the details of prospective childcare providers who have contacted them in respect of registration, it is considered that this would not be appropriate given that there is no guarantee that they will go forward to pursue registration.

15.3. Once the new regulations are agreed in Plenary, CSSIW will commence its implementation plan which includes training for inspectors and other staff on the new legislative framework. The implementation by inspectors and regions will be monitored for consistency and adherence to the legislation.

### **Question 16**

**We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:**

16.1. Respondents provided views on a range of issues, including those that are addressed in the response below.

### **Response**

#### **Voluntary Childcare Approval Scheme**

16.2. Arrangements for a voluntary childcare approval scheme, which would enable providers to demonstrate to parents/carers who use their services that they meet minimum requirements relating to staff, premises and provisions designed to safeguard children, are under consideration. The establishment of such a scheme would also enable parents to benefit from employer-supported childcare voucher schemes and the Working Tax Credit childcare element.

#### **“Supporting Quality Childcare in Wales – Review of the Regulations and the National Minimum Standards for Daycare and Childminding” report**

16.3. It is noted that some respondents have raised concerns that we have not observed the “Supporting Quality Childcare in Wales – Review of the Regulations and the National Minimum Standards for Daycare and Childminding” report which was produced by Melyn Consulting under contract to the Welsh Assembly Government and published in April 2009.

16.4. We have either addressed the issues within the report or are in the process of doing so through such action as the progression of legislation, the revision of the National Minimum Standards and the development of arrangements for a voluntary childcare approval scheme.

#### **Guidance and National Minimum Standards**

16.5. The consultation comments have demonstrated that there is a need for the Assembly Government to develop guidance to accompany the new regulations to ensure clarity for stakeholders. As part of this process, Assembly Government officials in conjunction with key sector stakeholders, are developing revised National Minimum Standards (NMS). Many of the concerns that respondents have raised will be addressed through the process of revising the NMS and the guidance will clarify the distinct roles of legislation and the Standards.



Consultation audience

Voluntary organisations in the childcare sector  
Children's Legal Centre  
Association of Directors of Education in Wales (ADEW)  
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)  
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  
Schools Workload Advisory Panel

**List of consultation respondents**

1. Chwarae Teg
2. Carmarthenshire Council Regeneration & Leisure
3. St David's School, Swansea
4. Flintshire County Council Children's Partnership
5. Pembrokeshire Coast National Park Authority
6. (Early years centre, South Wales)
7. (Non-devolved public sector body)
8. Carmarthenshire Children's Partnership
9. Ceredigion Council Childcare Information & Development
10. (Local authority social services & regeneration)
11. Welsh Local Government Association
12. (Local authority children's directorate)
13. Caerphilly County Borough Council
14. National Day Nurseries Association
15. (Local authority early years improvement & effectiveness)
16. Play Wales
17. Rhondda Cynon Taff County Borough Council
18. Bishopston Play Association
19. Children's Commissioner for Wales
20. National Child Minding Association
21. Jig-so Children's Centre
22. Clybiau Plant Cymru Kids' Clubs
23. Wrexham County Borough Council
24. Wales Pre-school Providers Association
25. Tiddlywinks Childcare Centre
26. Children in Wales