

Explanatory Memorandum to The Child Minding and Day Care Exceptions (Wales) (Amendment) Order 2016

This Explanatory Memorandum has been prepared by Education and Public Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

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 Exceptions (Wales) (Amendment) Order 2016. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths AM,
Minister for Communities and Tackling Poverty
3 December 2015

1. Description

The Child Minding and Day Care Exceptions (Wales) (Amendment) Order 2016 extends the circumstances in which a person whose activity would otherwise fall within the definition of “child minding” or “day care for children” is excepted from it and who is therefore not required to register under Part 2 of the Children and Families (Wales) Measure 2010.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no matters of special interest to the Committee.

3. Legislative background

The Children and Families (Wales) Measure 2010 was passed by the National Assembly for Wales on 10 November and received Royal Approval on 10 February 2010.

Under Part 2 of the Measure a person who acts as a child minder or provides day care for children under the age of 8 must be registered with the Welsh Ministers.

The Measure provides the Welsh Ministers with the power to make an Order to:

- amend section 19(2) or (3) to substitute a different age (section 19 (4)(a));¹
- specify the circumstances when a person is not acting as a child minder or providing day care (section 19 (4)(b) and (c)).

An Order made under section 19 of the Measure is subject to approval by the National Assembly for Wales by affirmative resolution procedure.

4. Purpose & intended effect of the legislation

This Order, made under section 19(4) of the Measure, will amend the Child Minding and Day Care Exceptions (Wales) Order 2010. The Order extends the circumstances in which a person whose activity would otherwise fall within the definition of “child minding” or “day care for children” is excepted from it and who is therefore not required to register under Part 2 of the Children and Families (Wales) Measure 2010 as amended.

¹ An Order to substitute a different age range was laid before the National Assembly for Wales on 8 December 2015 and is to be debated in Plenary on 26 January 2016. The effect of the Order is to extend on and after 1 April 2016, the registration requirements to persons who act as a child minder or provide day care for children under the age of 12.

The Order excludes youth service provision for young persons who have attained the age of eleven from the requirement to register on an after 1 April 2016. It further makes consequential amendments to reflect changes arising from the Order.

Consultation

Details of the consultation can be found in the RIA below.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option 1 – Do nothing

In order to extend childcare registration to all provisions caring for children up to the age of 12, including those provisions which are not deemed childcare, one option would be to do nothing. This would have the unintended policy consequence of bringing youth provision designed for young people aged between 11 and 25 years into childcare regulation in respect of those children aged between 11 and 12.

Youth provision, is not classed as a primary form of child care, and any care which may take place is incidental to the main purpose of the provision. Youth Services are distinct from childcare as they are based on voluntary engagement for young people, and do not require any form of parental consent required for attendance. There is also no formal payment, except in some circumstances where a nominal charge may be paid by the young person.

If this option was to be pursued it would result in provisions which are not currently defined in the National Minimum Standards for Regulated Child Care being brought into the scope of childcare regulation with all the associated costs connected with regulation.

The Order also makes consequential amendments to reflect the changes arising from the amendment of the Children and Families (Wales) Measure 2010 to extend the age limit of children in relation to the provision of 'childcare'. If these were not made the Order would not reflect this amendment.

Option 2 – Amend the exemptions Order to reflect the changes in the age limit and to exempt youth provision

This option would see the exemptions Order amended to exempt youth provision from registration. This would be in line with the policy intentions and remove any unintended financial burden on both the youth sector and CSSIW who would be required to register such services.

It will also ensure the Order reflects the changes arising from the amendment of the Children and Families (Wales) Measure 2010.

Costs & benefits

Option 1 – Do nothing

The direct benefit of including youth provision within registrations requirements would be it would give parents new reassurances youth services are regulated to minimum standards of care. However, as stated above standards designed for childcare provision are not considered to be the appropriate mechanism for assessing the quality of youth provision.

The costs would, however, increase for both providers and the Inspectorate. It is unknown how many youth services are currently operating across Wales.

Whilst no registration charge is imposed by CSSIW, the need to register would impose an administrative cost on youth providers if this option was pursued. The time required to gather all necessary information, complete the registration process and undergo a registration visit is expected to be in the range of 30-40 hours for a new applicant. Data from the Annual Survey of Hours and Earnings (ASHE) shows the average hourly wage for a manager or proprietor in health and care services in Wales in 2015 is £14.42. The likely additional cost to each service provider would therefore be £400 - £600. As a result, a large proportion of youth services in Wales may choose to begin charging for the service to cover the additional cost or may opt to no longer provide services for children aged between 11 and 12.

CSSIW would also be expected to increase its workload to accommodate new registrations of the youth sector. No estimates have been made in respect of this provision. However estimates in respect of the extension of childcare provision suggest if 500 new childcare applications were received and 50% of existing registrants changed their conditions of registration, the costs would be around £3.4 million over four years including a £2.2 million cost over the transitional two-year period (2015/16 -2016/17) with an approximate recurring cost of around £600,000 per year from 2017/18 onwards.

Option 2 - Amend the exemptions Order to exempt youth provision

As youth provision is not classed as a primary form of childcare, it would seem beneficial to exempt this sector entirely from the registration arrangements. This would be in line with the policy intentions and remove any unintended financial burden on both the youth sector and CSSIW who would be required to register such services.

There would be no additional costs to exempting youth provision from the Registration regulations.

This is the preferred option.

Consultation

In developing proposals to take forward our policy objective to ensure there was an appropriate childcare registration framework in place for children over the age of 8, Welsh Government officials engaged with representatives of the child care sector. This engagement was via CWLWM, a consortium of the 5 main child care providers. Engagement also took place with representatives of the play sector and Local Authorities.

A 12-week public consultation took place between March and June 2015 seeking views about the proposed changes to the registration of childcare provision in Wales. Consultation events were arranged in north and south Wales aimed at a strategic level within Local Authorities, child care, play and youth sector. Events at a local level aimed at providers took place in partnership with the CWLWM childcare consortium and Play Wales.

The consultation closed on 5 June with over 130 responses received. The consultation demonstrated wide scale support from the childcare sector for exempting registration to youth provision. A summary of the outcome of the consultation, including the Welsh Government response, was published in November 2015 <http://gov.wales/consultations/people-and-communities/extension-of-childcare-registration/?status=closed&lang=en>

Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing	No

The competition filter test	
Question	Answer yes or no
costs for new or potential suppliers that existing suppliers do not have to meet?	
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Presenting the results of the competition filter test

The competition filter test raised no issues on completion.

Post implementation review

Childcare in Wales is regularly reviewed to ensure it provides high quality, affordable and sustainable care across all areas of Wales. This is handled in the following ways:

1. The Childcare Sufficiency Assessments are submitted annually by Local Authorities to Welsh Government, and provide a comprehensive report of child care supply and demand within their authorities. This should provide Welsh Government with ongoing evidence of any effects the new regulation will have on the sector.
2. The Care and Social Services Inspectorate Wales (CSSIW) annually collates data from all registered providers across Wales, looking at quality following inspections and a range of trends.

The Welsh Government does not intend to carry out an evaluation on the impact of the regulations as annual reviews of the sector should provide sufficient evidence to evaluate the effects successfully.