

NATIONAL ASSEMBLY FOR WALES

S T A T U T O R Y I N S T R U M E N T S

2004 No. (W.)

SOCIAL CARE, WALES

**CHILDREN AND YOUNG
PERSONS, WALES**

The Suspension of Day Care
Providers and Child Minders
(Wales) Regulations 2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under Part XA of the Children Act 1989 and apply to persons who act as child minders or provide day care on premises situated in Wales. They set out the circumstances in which a person's registration may be suspended by the National Assembly for Wales and allow for a right of appeal to the Tribunal established under the Protection of Children Act 1999. They come into force on 20 December 2004.

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(Wales) Regulations 2004**

Made 2004

Coming into force 20 December 2004

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The National Assembly for Wales makes the following Regulations in exercise of the power conferred on it by sections 79H(1) and (2) and 104(4) of the Children Act 1989(a):

Citation, commencement and application

1.—(1) These Regulations may be cited as the Suspension of Day Care Providers and Child Minders (Wales) Regulations 2004 and come into force on 20 December 2004.

(a) 1989 c.41; section 79H was inserted by section 79 of the Care Standards Act 2000 (c.14).

(2) These Regulations apply in relation to persons who are registered to act as child minders or to provide day care on relevant premises in Wales.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires—

“the Act” (“*y Ddeddf*”) means the Children Act 1989 and any references to sections are references to sections of that Act;

“appropriate office” (“*swyddfa briodol*”) means –

- (a) if an office has been specified under paragraph (2) in relation to any registered person, that office;
- (b) in any other case, any office of the National Assembly;

“costs order” has the same meaning as in the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002(a);

“day care” has the same meaning as in section 79A(6);

“the National Assembly” (“*y Cynulliad Cendlaethol*”) means the National Assembly for Wales;

“registered person” (“*person cofrestredig*”) means a person who acts as a child minder or who provides day care and who is registered under section 79F; and

“the Tribunal” means the tribunal established by section 9 of the Protection of Children Act 1999(b).

(2) The National Assembly may specify an office controlled by it as the appropriate office in relation to a registered person.

(3) In these regulations a reference –

- (a) to a numbered regulation is to the regulation in these regulations bearing that number;
- (b) in a regulation to a numbered paragraph is to the paragraph in that regulation;
- (c) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

(a) S.I. 2002/816.

(b) 1999 c.14.

Power to suspend registration

3.—(1) The National Assembly may, in accordance with regulations 4, 5, 6 and 7, suspend the registration of any person acting as a child minder or providing day care if there is reasonable cause for the National Assembly to believe that the continued provision of child minding or day care by that person exposes or may expose one or more of the children to whom it is or may be provided to the risk of harm and the purpose of the suspension is for one or both of the purposes set out in paragraph (2).

(2) The purposes of the suspension are—

(a) to allow time for the circumstances giving rise to the National Assembly's belief to be investigated; and

(b) to allow time for steps to be taken to reduce or eliminate the risk of harm.

Period of suspension

4.—(1) If the National Assembly suspends the registration of any person under regulation 3, the suspension begins and ends on such dates as are specified in the notice required to be given to the registered person under regulation 5.

(2) The date specified as the date on which the suspension ends may not be more than 6 weeks after the date on which it begins.

(3) Subject to paragraph (4), the fact that a person's registration has at any time been suspended does not prevent the National Assembly from further suspending that person's registration at any time, whether during a previous period of suspension or after it has ended and whether on the same grounds or on different grounds.

(4) The National Assembly may not, unless paragraph (5) applies, exercise its power to suspend a person's registration in such a way that the effect of doing so would be that the person's registration would be suspended for a period which, taken together with any other period for which that person's registration has been suspended on the same or substantially the same grounds, exceeds a total of 12 weeks within any period of twelve months.

(5) This paragraph applies if, at the time when the National Assembly exercises its power to suspend a person's registration, one or more of the following circumstances applies;

(a) the investigation referred to in regulation 3(2)(a) has not yet been completed;

(b) the steps referred to in regulation 3(2)(b) have not yet all been taken; or

(c) the National Assembly has decided to take action against the registered person under section 79K of the Act (application to a justice of the peace for protection of children in an emergency) but the application has not yet been determined; provided, in each case, the circumstance in question is not due to any failure on the part of the National Assembly to take such steps as were reasonably practicable for it to take.

(6) Any notice given to a registered person under regulation 5 which imposes a period of suspension which the National Assembly would not, if paragraph (5) did not apply, have power to impose must state that fact and must identify which of the circumstances identified in that paragraph applies.

(7) References in this regulation to the grounds for suspending a person's registration are references to the circumstances which cause the National Assembly to believe that the continued provision of child minding or day care by that person exposes or may expose one or more of the children to whom it is or may be provided to a risk of harm.

Notification of suspension, etc

5.—(1) The National Assembly must, in accordance with regulation 6, give the registered person written notice of any suspension of registration made under these Regulations and any such notice must include the reasons for the decision and details of the registered person's right of appeal against suspension.

Notice Provisions

6.—(1)) A notice under these Regulations may be given by being delivered personally to the registered person, sent, properly addressed, by post in a registered letter or by the recorded delivery service or by being transmitted electronically.

(2) A notice to a registered person under these Regulations is to be deemed to be properly addressed if it is addressed to the registered person at the home address notified previously by the registered person to

the National Assembly upon the registered person's application for registration or subsequently.

(3) A notice is transmitted electronically for the purposes of paragraph (1) where the particulars contained in the notice are transmitted by electronic means from a computer system operated by the National Assembly to a computer system operated by the registered person at any number or address used for the purposes of electronic communications notified by that person to the National Assembly.

Lifting of suspension

7.—(1) Without prejudice to regulation 4(2), where the National Assembly has suspended a person's registration, it must, whether or not a written request has been made under paragraph (2), lift the suspension at any time if it no longer has reasonable cause to believe that the grounds for suspension apply.

(2) A person whose registration has been suspended under these Regulations may, at any time, make a written request to the appropriate office of the National Assembly that the suspension be lifted.

(3) Where the National Assembly makes a decision to lift or to refuse to lift the suspension of a person's registration, it must immediately and in accordance with regulation 6, send a notice of the decision to the registered person.

(4) Where the National Assembly decides not to lift the suspension of a person's registration, the notice under paragraph (3) must include the reasons for the decision and details of the registered person's right of appeal against the decision.

(5) Any decision by the National Assembly to lift a suspension takes effect as from a specified date which must be included in the written notice referred to in paragraph (3).

Rights of Appeal

8.(1) A person whose registration has been suspended under these Regulations may appeal to the Tribunal against—

- (a) the National Assembly's decision to suspend that person's registration;
- (b) the National Assembly's refusal to lift that suspension when requested to do so in accordance with regulation 7(2).

(2) Subject to paragraph (3), on an appeal under paragraph (1), the Tribunal may—

(a) confirm the National Assembly's decision to suspend registration or, as the case may be, to refuse to lift the suspension;

(b) direct that the suspension shall cease to have effect

and, for the avoidance of doubt, in any case in which the Tribunal exercises its power under (a) it may also exercise its power under (b) if at the time of making its determination it is satisfied that the conditions for suspension are no longer met.

(3) If the suspension of a person's registration against which an appeal has been made under paragraph (1) is no longer in effect, the Tribunal:

(a) must strike out the appeal; and

(b) (b) may make a costs order.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(a).

Date

(a) 1998 c.38.