

**Explanatory Memorandum to The Child Minding and Day Care (Wales)
(Amendment) Regulations 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 (Wales) (Amendment) Regulation 2016. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths AM, Minister for Communities and Tackling Poverty
29 January 2016

1. Description

The Child Minding and Day Care (Wales) (Amendment) Regulations 2016 amend the Child Minding and Day Care (Wales) Regulations 2010 to:

- reflect the consequential changes arising from the Regulation of Child Minding and Day Care (Wales) Order 2016 which extends the upper age limit for the registration of childcare provision from 8 to 12 years.
- remove the requirement on applicants to provide Welsh Ministers with an application for an enhanced criminal record certificate and for the Welsh Ministers to countersign that application
- remove the requirement for a certificate of registration to contain the name of the person in charge where one has been appointed
- remove certain requirements relating to open access play provision

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.

Section 30 of the Measure gives the Welsh Ministers the power to make regulations governing the activities of registered persons who act as child minders, or provide day care, on premises in Wales. These Regulations are subject to annulment by the National Assembly for Wales by the negative resolution procedure.

4. Purpose & intended effect of the legislation

These Regulations, made under Part 2 of the Measure amend the Child Minding and Day Care (Wales) Regulations 2010. They include amendments

to;

- a) reflect the consequential changes arising from the Regulation of Child Minding and Day Care (Wales) Order 2016 which extends the upper age limit for the registration of childcare provision from 8 to 12 years.
- b) remove the requirement on applicants to provide Welsh Ministers with an application for an enhanced criminal record certificate and for the Welsh Ministers to countersign that application. This counter signatory arrangement was originally put in place to align with the operational requirements of the former Criminal Records Bureau (CRB). The arrangements in place ensured the counter signatory (CSSIW in Wales) had direct access to an applicant's criminal record check and, in terms of safeguarding, provided rationale for the role of Welsh Ministers as a counter signatory body.

However with the replacement of the CRB by the Disclosure Barring Services (DBS) counter signatories no longer receive a copy of the enhanced criminal record certificate directly from the DBS. This means CSSIW relies on the individual providing their certificate to them on registration. In line with the current Regulations, however, CSSIW still acts as a counter signatory for DBS applications. This is now largely a bureaucratic requirement which CSSIW believes does little to enhance the safeguarding of children in registered provision.

The proposed legislative changes therefore remove the requirement for CSSIW to countersign the enhanced criminal records checks on behalf of Welsh Ministers. This means providers will apply to the Disclosure and Barring Service, through a third party or a body on the DBS approved list, rather than route their application via CSSIW. As part of the provider application to a third party, the provider would be required to include their consent for information about their DBS to be shared with CSSIW.

The change will support CSSIW's move towards the provision of on-line services in 2016 which will streamline the registration process.

- c) remove the requirement for a certificate of registration to contain the name of the Person in Charge (PIC) where one has been appointed. The removal is of a technical nature since Regulations do not require approval of the PIC nor are they required to be registered with CSSIW as a condition of registration.
- d) remove those requirements relating to the fitness of premises which are inappropriate in the context of open access provision.

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 extending registration to children aged 8 and over with no significant concerns raised in respect of proposals to change the requirement for Welsh Ministers to countersign DBS Certificates. 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>

In addition changes within these regulations have been considered as part of six regional workshops which the regulator (CSSIW) undertook with providers and wider stakeholders over December, to raise awareness and to prepare them for the changes.

Regulatory Impact Assessment (RIA)

An RIA has not been carried out in respect of these Regulations as they are primarily concerned with consequential changes to the Child Minding and Day Care (Wales) Regulations 2010 for which an RIA has been conducted. <http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?Id=14220>

The additional amendments either do not place an additional regulatory burden on the public, or have been made for clarification purposes with no major policy impact.