

Explanatory Memorandum to the Regulation of Child Minding and Day Care (Wales) 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 Regulation of Child Minding and Day Care (Wales) Order 2016. I am satisfied that the benefits outweigh the likely costs.

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

1. Description

The Regulation of Child Minding and Day Care (Wales) Order 2016 extends the upper age limit for the compulsory registration of childcare in Wales. It will ensure the current arrangements which apply for the regulation, registration and inspection of childcare for children up to the age of 8 years are extended to children up to the age of 12. This change will ensure a consistent means of regulating the quality and suitability of childcare provision for children up to the age of 12 exists in Wales.

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 (“the Measure”) was passed by the National Assembly for Wales on 10 November 2009 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));
- specify the circumstances when a person is not acting as a child minder or providing day care (section 19 (4)(b) and (c)).¹

An Order made under section 19 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 amends section 19(2) and (3) of the Measure to extend the registration requirement to persons who act as a child minder or a day care provider for children under the age of 12.

It also makes transitional provision to:

- ensure that existing registered providers are automatically treated on and after 1 April 2016 as registered to care for children under the age of twelve;

¹ An Order specifying circumstances when a person is not acting as a child minder or providing care 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 exclude youth service provision from the requirement to register under Part 2 of the Measure on and after 1 April 2016.

- allow the Welsh Ministers until 31 August 2016 to determine variation applications received before the 1 April 2016 from registered providers (an application to vary conditions of registration will be required where for example, an existing provider wishes to continue to care for children aged 8 to 12).

The Order further makes consequential amendments to reflect changes arising from the Order.

At present childcare registration in Wales is generally required where childcare providers provide care for children up to the age of 8 years. Aside from a voluntary scheme for the registration of nannies, there is no scheme in place in Wales for registering any form of childcare for children aged 8 and over. Elsewhere in the UK there is a different picture. In Scotland, registration is compulsory when care is provided for children aged up to sixteen, whilst in Northern Ireland the upper age limit is 12. In England registration is compulsory up to 8 years old, with a voluntary (but statutory) register existing for providers caring for children aged 8 years and over.

The current system of regulation in Wales means unlike the rest of the UK there is no consistent means of regulating the quality and suitability of childcare provision for children aged 8 years and over.

This was recognised in the findings of the Independent Review into Childcare and Early Education Registration and inspection, the '[Graham Review](#)' which published its report in August 2014. The Review recommended all childcare provision, including childcare operating for under 2 hours or for children age 8 and over, should be registered and subject to inspection in order to safeguard children and ensure quality of provision.

In addition to there being no consistent means for regulating childcare provision for children over 8, families in Wales are also not able to access financial support for childcare costs through the current and future UK Government tax and benefits schemes if they are using unregistered childcare. This places Welsh families at a disadvantage when compared to their counterparts in other parts of the UK.

The proposed legislative changes will ensure there is a consistent means for regulating the quality and suitability of childcare provision up to the age of 12. It is considered this will lead to an improvement in the quality of childcare provision across Wales and will help to ensure children are treated equitably and cared for in settings which are subject to regulation and inspection. It will bring the system of registration in line with other parts of the UK and enable parents and carers of children up to the age of 12 to access the UK wide tax and benefits subsidies available for childcare costs incurred in registered provision. This will help to reduce the costs of childcare for parents and carers and thus contribute to the tackling poverty priority of enabling more parents to access affordable childcare.

5. Consultation

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

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option 1 – Do nothing

Given the increase in the regulatory burden changes in registration would bring to the childcare sector, and the impact this may have on the sustainability of previously unregistered provision, one option would be to retain the existing arrangements and not to extend registration beyond the age of 8. This would also remove the need to allocate additional financial resources to fund the Care and Social Services Inspectorate Wales (“CSSIW”) to deliver extended registration.

However, the current arrangements do not provide a consistent means of regulating the quality and suitability of childcare provision for children aged eight years and over. This was recognised in the responses to our public consultation ‘Changes to the registration of childcare provision in Wales’ which demonstrated wide scale support from the childcare sector for extending registration to children aged 8 years and over.

This option would also put Welsh parents at a disadvantage compared to parents elsewhere in the UK, where systems exist (whether voluntary or compulsory) for the registration of provision for older children, enabling parents to access the tax and welfare benefits which provide support with the cost of registered childcare. It would also mean that no effect is given to the recommendations of the Independent Review into Childcare and Early Education (The Graham Review) which recommended all childcare provision in Wales should be registered.

Option 2 – Introduce a voluntary registration scheme

This option would be to introduce a scheme of voluntary registration for childcare settings for those aged 8 to 12 years. This would reduce some of the drawbacks of a compulsory registration scheme. It would for instance reduce cost and compliance burdens, whilst also creating some certified settings for over 8s, enabling parents to claim support on the costs of them. There would also be a reduced implementation cost as not all settings who would be caught by compulsory registration would opt to register voluntarily.

Providers of childcare for children in this age group may welcome the opportunity to market their provision as being of a higher standard than non voluntary registered provision and there could be a corresponding improvement

in the quality of provision, although it would clearly not raise standards across the board, since registration would not be compulsory.

This option would mean the position in Wales would be brought closely into line with England where childcare provision is subject to compulsory registration up to the age of 8 with voluntary registration up to the age of 18. It would be less comprehensive than the position in Scotland and Northern Ireland.

However there can be no guarantee enough providers would choose to register under this scheme as they might decide the compliance burden of doing so outweighed the advantages (e.g. of providing assurance to parents). The precise figure is difficult to predict accurately but experience elsewhere in the UK indicates this is a serious possibility. English data² show 1,898 settings caring specifically for over-8s have chosen to register there. In Scotland³, where registration is compulsory, there are 722 such settings registered, or around 40% as many. Yet the 8-11 population of England is some 11 times that of Scotland, so it seems very likely most such settings in England have not registered.

Voluntary registration may increase once widespread tax incentives are introduced under the 'tax free childcare scheme' due to be launched in September 2017 as parents may be then disinclined to use non registered settings. However there remains a significant risk this may not be the case. Whilst in some areas competition between providers may encourage voluntary registration this will not necessarily be the case throughout Wales particularly in areas with gaps in provision. Many parents could still find there was no suitable, local and registered care available for over 8s thus denying them the assurance which registered provision would bring plus access to UK tax and benefit support.

The introduction of such a scheme might also entail primary legislation which would take significant time to develop, enact and implement. For these reasons, this option is not considered further.

Option 3 – Extend the age of childcare registration to 12 years of age.

This option would extend compulsory registration to children up to the end of primary school or first year in secondary school. It would correspond to the upper age limit to which most parents use formal childcare, and would ensure a consistent means of regulating the quality and suitability of childcare provision up to that age. It would also allow parents in Wales to access the UK tax and

² Ofsted, Registered childcare providers and places in England, March 2014. A further 1,690 English settings are registered for both over- and under-8s.

³ (Scottish) Care Inspectorate, Childcare Statistics 2012

benefit support for the costs of registered childcare. Setting the upper age limit at 12 would also reduce the potential for bringing into childcare regulation provision designed for older children/young people such as youth provision.

The position in Wales would be the same as Northern Ireland where those caring for children up to the age of 12 have had to register since 1995; it would be more comprehensive than England, where registration beyond the age of 8 is merely voluntary.

This option would bring into regulation providers of childcare for the 8 to 12 year age group. However it would increase the regulatory burden on a sector which already has issues of sustainability. The 2015 refresh of Local Authority Childcare Sufficiency Assessments evidenced issues of sustainability across the childcare sector throughout Wales with rural areas being particularly affected.

Option 4 – Extend the age of childcare registration to 16 years of age.

This option is more in line with the recommendations of the Graham Review, which whilst not suggesting an upper age limit, recommended all childcare provision should be registered.

The main advantages of this option are it would provide a consistent means of regulating the quality and suitability of childcare provision for children aged 8 to sixteen years in Wales and would ensure parents in Wales are able to access UK tax and benefit support for childcare.

The position in Wales would be virtually the same as Scotland where childcare providers for all children up to age 16 must register; and more comprehensive than Northern Ireland where the upper age limit is 12, and England where registration is compulsory up to 8 and voluntary for older children up to age 18.

However, the extension of regulation to 16 would significantly increase the regulatory burden on a sector which already has issues of sustainability, and could stifle as well as improve provision. There is a risk the change could also lead to a reduction in available provision in Wales as current providers of childcare for older children may opt to exit the sector rather than incur the costs associated with meeting all the standards necessary for regulation. There could also be an increase in fees which could be passed on to parents.

Responses from the consultation also suggest the majority of parents do not use formal childcare beyond the age of 12, so this option is arguably a disproportionate response. Moreover regulation up to the age of 16 would

increase the risk of bringing into regulation areas traditionally not seen as childcare, such as for example youth service provision. For these reasons, this option is not being considered further.

Costs & benefits

Option 1 – Do nothing

This option maintains the current policy position and as such, there are no additional costs or benefits to providers or the regulator under this option.

Parents/Carers of children aged over 8 years in Wales would be at a disadvantage compared to their counterparts elsewhere in the UK, where systems exist (whether voluntary or compulsory) for the registration of provision for older children. These enable parents to access the tax and welfare benefits which provide support with the cost of registered childcare costs. The support available to parents under the tax free childcare scheme due to be launched in 2017 amounts to 20 per cent of childcare costs, whilst under Universal Credit arrangements working parents using registered or approved childcare provision will be eligible for support of up to 85 per cent from 2016.

Option 3 Extend the age of childcare registration to 12 years of age.

Benefits

Direct

The main policy objective for extending the upper age limit for the registration of childcare is to ensure there is a consistent means of regulating the quality and suitability of childcare for older children. This will help to ensure children up to the age of 12 are cared for in a safe, secure and appropriate environment. It will provide parents and carers of older children with critical assurances around the safety and quality of the care their children receive in childcare settings. It will also allow parents in Wales to access the UK tax and benefit support available for the costs of registered or approved childcare up to the age of 12 years.

Indirect

The position in Wales would also be more in line with the situation elsewhere in the UK where arrangements are in place (whether compulsory or voluntary) for the registration of provision for older children. This option would also address to some extent the findings of the Graham review. It would also in the view of

representatives of the childcare sector ensure there is a more consistent approach to regulation across the whole childcare sector, which would help to improve the sustainability of existing registered providers.

The extension in the upper age limit for registration will also lead to an increase in the number of childcare settings required to comply with the National Minimum Standards (NMS) for Regulated Child Care. These standards include outcomes aligned with equality and inclusion and the need to have regard to the Welsh Language. As a result, this will increase the ability of parents/carers to access information on Welsh language childcare for children aged between 8 and 12 as the language in which a registered setting operates, will be made available through the CSSIW website. Finally, setting the upper level at 12 will help to reduce the potential for bringing into childcare regulation provision designed for older children/young people.

Costs

Extension of childcare regulation will result in increased costs for CSSIW both in terms of setting up and administering a new scheme. These costs are estimated by CSSIW as being between £2.8 and £3.4 million over a 4 year period based on an estimated 300-500 newly registered settings. The costs also take account of the increased activity involved in extending the registration to cover existing providers whose registrations will require variation to cover older children.

At the lower end assumption of 300 new applications and 50% of existing providers (approximately 2,200) changing their conditions of registration the £2.8 million cost over four years includes around £1.8 million over the transitional two-year period (2015/16 - 2016/17) and an approximate recurring cost of around £500,000 per year from 2017/18 onwards. At the upper end of around 500 new applications, and 50% of existing registrants changing 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) and an approximate recurring cost of around £600,000 per year from 2017/18 onwards.

The transitional costs will include stakeholder engagement, business and ICT changes, activities around registering new providers for the first time as well as variations from existing providers wishing to extend their provision to care for children over the age of 8 years.

There will be an additional cost for some childcare providers as a result of the extension of regulation. The main group likely to be impacted are those providers who are not currently required to register but who will be required to register under these proposals (i.e. those providers looking after children aged

between 8 and 12). There may also be an additional cost to currently registered providers if, as well as children under the age of 8, they also look after children aged between 8 and 12.

Whilst no registration charge is imposed by CSSIW, the need to register will impose an administrative cost on providers both newly registered and those registered providers seeking to extend their registration to care for children aged between 8 and 12. As stated above, it is estimated there are an additional 300-500 providers who will need to register for the first time under this option. 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. This is not expected to exceed 15 hours for an existing provider of which an estimated 2,200 will seek to vary their registration. 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. On this basis, the aggregate registration cost for the estimated newly registered 300-500 childcare providers and those existing providers seeking to vary their registration is approximately £0.65 m to £0.76 m.

However the cost to individual providers could be considerably lower if they take advantage of the support offered by the childcare membership organisations. Welsh Government currently provides funding of £4.3 million over a three year period to the CWLWM childcare consortium made up of 5 leading childcare organisations in Wales. This funding is to help support Welsh Government in taking forward its childcare agenda and includes providing advice and guidance to providers seeking to register with CSSIW.

There will also be an ongoing cost to providers associated with annual inspections. However, CSSIW is introducing a new inspection framework and cycle to include older children under 12 years and to place a greater focus on wellbeing outcomes. The frequency of inspection will be linked to risk and should result in fewer inspections, and subsequently a reduced inspection burden for providers who have a sustained history of compliance with NMS⁴.

In addition, providers (including those who are currently registered but who also look after 8-12 year-olds) will be required to meet the standards set out in the National Minimum Standards for Regulated Childcare (NMS). It is difficult to quantify these with any degree of certainty as they will vary from setting to

⁴ CSSIW Annual Report 2013/14 - breakdown of performance reported 96% of childcare services inspected did not require any enforcement action – were compliant

See <http://cssiw.org.uk/our-reports/annual-reports/2013-2014/?lang=en>

setting and will relate to the existing quality of the provision. Potential costs to providers would include the additional time undertaking administration to ensure their businesses meet the required standards and the cost associated with addressing any additional training requirements (although a lead in time of up to five years is currently under consideration, with Welsh Government looking to use funding from ESF operations to support businesses in gaining any additional qualifications).

Where a provider faces an additional cost they may attempt to pass the cost on to the customer. The extent to which they are able to achieve this will depend upon the level of competition in their area.

There is a risk the proposals and potential additional costs may result in some providers reducing the number of childcare places they offer (to comply with NMS), changing the age groups they care for or exiting the sector altogether. In addition, there are potential cross-border impacts. As noted above, registration in England is voluntary for providers looking after children older than 8, there may therefore be additional costs to providers in Wales which providers in England are not required to meet. To mitigate against these risks the changes we are making to the NMS take account of the impact on the sustainability of the sector. They reflect the varying challenges facing the different types of provision and in some instance these changes will be phased in over a period of up to 5 years.

There is no current evidence available from Scotland or Northern Ireland on the impact on the childcare sector of extending the registration requirement.

As noted above, extending the requirement for childcare providers to register is expected to result in more parents/carers in Wales being able to access the relevant UK wide tax and benefit subsidies. While this represents a benefit to parents/carers in Wales there is a corresponding cost for DWP/HMRC.

Summary of the preferred option

In the light of this analysis of the costs and benefits of each option the extension of the upper age limit to 12 years for the registration of childcare has been chosen as the most suitable option. It would extend registration to children up to the end of primary school or first year in secondary school and would correspond to the age limit at which most parents use formal childcare.

It would ensure a consistent means of regulating the quality and suitability of childcare provision up to the age of 12. It would also; enable parents in Wales

to access those UK wide tax and welfare benefits available to off set the costs of registered childcare. Setting the upper age limit at 12 would also reduce the potential for bringing in childcare regulation provision designed for older children/young people such as youth provision, for which registration would be disproportionate.

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 childcare sector. This engagement was via CWLWM, a consortium of the 5 main childcare sector organisations. Engagement also took place with as 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, Childcare, Play and Youth Sector. Events at a local level aimed at providers took place in partnership with the childcare CWLWM consortium and Play Wales.

The consultation closed on 5 June with over 130 responses received. Consultation demonstrated wide scale support from the childcare sector for extending registration to children aged 8 and over. A summary of the outcome of the consultation including the Welsh Government response was published in November 2015 and is [attached](#).

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? | Yes |

| The competition filter test | |
|--|---------------------|
| Question | Answer yes or 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 costs for new or potential suppliers that existing suppliers do not have to meet? | No |
| 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? | Yes |

Presenting the results of the competition filter test

The competition filter test indicated the legislation posed a very low risk of having a detrimental impact on competition. The changes may have an impact on the size of some provisions who because they are subject to the NMS would need to comply with the specified adult:child ratios within their settings. However the ratios have been set to ensure a balance is achieved between helping to ensure all children in registered childcare provision are cared for in a safe and appropriate environment but also to take account of the impact of any increased burdens on childcare providers.

The changes could also place restrictions on the autonomy of providers in terms of decisions around the quality of their provision. However this is a positive change as it relates to the increase in the number of settings being subject to the NMS and minimum quality standards. This will help to ensure that the quality of childcare provision in Wales is raised and children are cared for in settings which are suitable, appropriate and of a high quality.

Post implementation review

Childcare in Wales is regularly reviewed to ensure it provides high quality, affordable and sustainable care across in all areas Wales.

1. Local Authorities conduct Childcare Sufficiency Assessments (CSAs) to help meet their statutory duty to provide sufficient childcare to enable parent to work or access training. These provide comprehensive reports of childcare supply and demand within Local Authorities.
2. The Care and Social Services Inspectorate Wales (CSSIW) annually collate data from all registered providers across Wales, looking at quality following inspections and a range of trends.

Although Welsh Government is not looking to do a specific evaluation following on from the implementation of the regulations, annual reviews of the sector should provide us with sufficient evidence to evaluate the effects successfully.