

Draft Order laid before the National Assembly for Wales on 23 November 2010 under section 74(5) of the Children and Families (Wales) Measure 2010, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2010 No. (W.)

**SOCIAL CARE, WALES
CHILDREN AND YOUNG
PERSONS, WALES**

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order sets out exceptions to what constitutes “child minding” or “day care for children” for the purposes of Part 2 of the Children and Families (Wales) Measure 2010 (“the 2010 Measure”).

Section 21 and 23 of the 2010 Measure require, respectively, a child minder and a person who provides day care for children to register with the Welsh Ministers. Section 19(2) and (3) define “child minding” and “day care for children”. Section 19(4) and (5) confer power on the Welsh Ministers to specify circumstances in which a person whose activity would otherwise fall within one of the definitions is excepted from it and who is not therefore required to register.

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Made

Coming into force in accordance with article 1

The Welsh Ministers make the following order in exercise of the power in section 19(4) and (5) and section 74(2) of the Children and Families (Wales) Measure 2010(1).

Part 1

Title, commencement, interpretation and application

1.—(1) The title of this Order is the Child Minding and Day Care Exceptions (Wales) Order 2010 and comes into force on 1 April 2011.

(2) This Order applies in relation to Wales.

(3) In this Order—

“the 2010 Measure” (“*Mesur 2010*”) means the Children and Families (Wales) Measure 2010;

(1) 2010 (nawm 1)

“domestic premises” (“*mangre domestig*”) means any premises which are used wholly or mainly as a private dwelling;

“parent” (“*rhiant*”) includes a person who is not a parent but who has parental responsibility for a child;

“premises” (“*mangre*”) includes any area and any vehicle;

“relative” (“*perthynas*”) means a grandparent, brother, sister, uncle or aunt (whether of the full blood or the half blood or by marriage or civil partnership) or step parent;

(4) Unless the contrary intention appears, words in the singular include the plural and words in the plural include the singular.

Part 2

Child minding exceptions

2. A person who looks after a child under the age of eight on domestic premises for reward does not act as a child minder for the purposes of Part 2 of the 2010 Measure in the circumstances described in the following articles 3 to 7.

3.—(1) A person looking after a child does not act as a child minder if that person —

- (i) is a parent, or a relative of the child; or,
- (ii) is a foster parent for the child.

(2) In this article “foster parent” (“*rhiant maeth*”) includes a person with whom a child has been placed by a local authority or by a voluntary organisation or a person who fosters a child privately.

4. A person does not act as a child minder where the period, or the total of the periods, in any one day in which the person looks after children does not exceed two hours.

5.—(1) A person who is employed —

- (a) (i) to look after a child or sibling group for parents (“the first parents”), or
- (ii) to look after a second child or sibling group for parents (“the second parents”) in addition to the children looked after for the first parents, and
- (b) who looks after the children concerned wholly or mainly in the first or second parents’ own home or homes,

does not act as a child minder.

(2) In this article—

- (a) “employed” (“*cael ei gyflogi*”) means employed either under a contract of employment or under a contract for services;
- (b) “parent” (“*rhiant*”) includes a person who is a relative of the child;
- (c) “sibling group” (“*grŵp o sibligiaid*”) includes half-brothers and half-sisters.

6. A person does not act as a child minder where the person only begins to look after the child in the period between 6pm on any one day and finishes looking after the child by 2am the following day.

7.—(1) A person does not act as a child minder where the person looks after a child or children in the course of friendship with the parents of that child or children and where no payment is made for the service.

(2) In this article “payment” (“*taliad*”) means a payment of money or money’s worth but does not include the provision of goods or services.

Part 3

Day care for children exceptions

8. A person who provides care for children under the age of eight on premises other than domestic premises is not providing day care for the purposes of the 2010 Measure in the circumstances set out in the following articles 9 to 15.

9. A person does not provide day care where the care is provided by that person on the premises in question on fewer than 6 days in any calendar year and the person has notified the Welsh Ministers in writing before the first occasion on which the premises concerned are used in that year.

10. A person does not provide day care where the period or the total of the periods in any one day on which children are cared for on premises does not exceed two hours.

11. A person does not provide day care where the care is provided to a child cared for in a children’s home in respect of which a person is registered under Part 2 of the Care Standards Act 2000.

12. A person does not provide day care where the care is provided to a child accommodated in—

- (a) a care home,
- (b) a hospital as a patient,
- (c) a residential family centre, or

as part of the activity of the establishment in question, whether by the provider of the establishment directly or by a person employed on the provider's behalf.

13.—(1) A person does not provide day care where the care is provided at a hotel, guest house or other similar establishment for a child staying in that establishment where—

- (a) the provision only takes place between 6 pm and 2 am; and
- (b) the person or, as the case may be, any individual employed by the person, who is providing the care is doing so for no more than two different clients at the same time.

(2) For the purposes of sub-paragraph (1)(b), a “client” is a person at whose request (or persons at whose joint request) care is provided for a child.

14.—(1) A person does not provide day care where care is provided to children at a school and the provision of care is incidental to the provision of education.

(2) In this article “school” (“*ysgol*”) means—

- (i) a maintained school within the meaning of section 39 of the Education Act 2002(1);
- (ii) an independent school; or
- (iii) a school approved by the Welsh Ministers under s.342 of the Education Act 1996(2) (approval of non-maintained special schools).

15.—(1) Subject to paragraph (2), a person does not provide day care where the person provides coaching or tuition in an activity of a type listed in paragraph (3) and any care provided to them is incidental to the provision of that coaching or tuition.

(2) The exception in this article does not apply if —

- (a) the children are below the age of 5 and attend for longer than four hours per day; or,
- (b) the person offers coaching or tuition in more than two of the types of activity listed in paragraph (3).

(3) The types of activity are —

(1) 2002 c.32
(2) 1996 c.56

- (a) sport;
- (b) performing arts;
- (c) arts and crafts;
- (d) school study or homework support;
- (e) religious or cultural study.

Signed

Deputy Minister for Children Under authority of
the Minister for Children Education and Lifelong
Learning, on behalf of the Welsh Ministers

Dated