

# **CHILDREN AND FAMILIES (WALES) MEASURE 2010**

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## **EXPLANATORY NOTES**

### **Part 1: Child Poverty, Play and Participation**

3. Part 1 of the Measure makes provision about contributing to the eradication of child poverty, places a duty on local authorities to secure sufficient play opportunities for children and makes provision about arrangements for the participation of children in local authority decisions that might affect them.

#### ***Part 1, Chapter 1: Eradicating Child Poverty***

#### ***Section 1: Broad aims for contributing to the eradication of child poverty***

4. This section sets a range of broad aims which, if pursued, are likely to contribute to the eradication of child poverty. These broad aims apply for the purposes of further provision made under Part 1. The aims are specified in paragraphs (a) to (m) of subsections (2) and they include aims which relate to household income, material deprivation and social factors relevant to the causes of child poverty. The main purpose of this list of aims is to set the field from which specified public authorities in Wales (see section 6) must choose objectives for inclusion in their child poverty strategies (see section 2).
5. Subsection (8) makes provision for the broad aims to be amended by order of the Welsh Ministers. Orders under this subsection are subject to an affirmative resolution procedure in the Assembly before they are made, which means that they must be approved by the Assembly before they are made (see section 74(5)).
6. Subsections (3) and (4) specify that the “relevant income groups” referred to in the aims in subsections (2)(a) and (b) are income groups defined by reference to the UK median household income. The broad aim in subsection (2)(a) is that there should be no household with children where the household income is less than 60 per cent of the median household income in the United Kingdom. The broad aim of subsection (2)(b) is that no children living in households where income is less than 70 per cent of the UK median household income should be “materially deprived”.
7. Welsh Ministers may make regulations to say how median income and material deprivation are determined for these purposes.
8. Subsection (6) makes provision in the event that the duty on Welsh authorities to prepare a strategy comes into force before any regulations are made under subsection (5). In that event, Welsh authorities must take their own view on what the material deprivation and median-related indicators mean.

#### ***Section 2: Strategies for contributing to the eradication of child poverty***

9. Section 2 imposes a duty on “Welsh authorities” to prepare and publish a strategy for contributing to the eradication of child poverty in Wales. The strategy should set out

objectives chosen by the authority which relate to the broad aims which are relevant to, and which can be pursued in, the exercise of its functions. The strategy must also contain the actions to be performed and functions to be exercised by the authority for the purpose of achieving its objectives. In the case of the Welsh Ministers and local authorities, they must choose objectives which relate to each of the broad aims.

10. Subsection (4) provides that Welsh Ministers must, in preparing their strategy, choose objectives which relate to their powers to provide funding to any person.
11. Subsection (5) gives the Welsh Ministers a power to make regulations to specify particular objectives for a Welsh authority over and above any objectives which the Welsh authority might chose for itself.
12. The list of Welsh authorities which are subject to the duty to prepare and publish a strategy is set out in section 6.
13. Provision about the preparation and publication of strategies are set out in sections 3 to 5 of the Measure and section 26 of the Children Act 2004 (“the 2004 Act”) (as amended by section 4 of the Measure).

### ***Section 3: Strategies prepared by the Welsh Ministers***

14. **Section 3** sets out provision about the making, publication and review of strategies under Part 1 of the Measure that are prepared by the Welsh Ministers.
15. Subsection (1) provides that the Welsh Ministers must publish their first strategy under the Measure in 2010; it requires them to keep their strategy under review and empowers them to remake or revise it from time to time.
16. The Welsh Ministers must consult the Secretary of State and such other persons as they consider appropriate before making, remaking or revising their strategy (subsection (2)).
17. Subsection (4) requires that the strategy (new or revised) is published and subsection (5) requires that any new or revised strategy must be laid before the Assembly. Following revision, the Welsh Ministers may either publish a document setting out the revisions or publish the strategy with the revisions incorporated.
18. Subsection (6) requires that the Welsh Ministers publish a report in 2013 and in every third year subsequently, containing an assessment of the extent to which objectives have been met and if objectives have not been met, progress that has been made towards meeting them. Reports must be laid before the Assembly.

### ***Section 4: Strategies prepared by local authorities (children’s service authorities)***

19. **Section 4** makes amendments to section 26 of the 2004 Act so that, for a local authority, the duty to have a child poverty strategy is linked to the existing duty under that section to prepare a plan saying how, more broadly, it will discharge its functions in relation to children and young persons. Subsection (1) provides that a local authority’s duty to publish a strategy is discharged by the publication of a plan under section 26 of the 2004 Act. The existing duty is amended by subsection (3) so that a local authority must include in its plan its strategy for contributing to the eradication of child poverty in Wales under section 2(1) of the Measure.
20. As well as their own child poverty strategy, a local authority may also include the child poverty strategies of other Welsh authorities with whom it has made an arrangement under section 25 of the 2004 Act. In this regard, see also section 5(4) and 5(5) which make provision that if another Welsh authority’s child poverty strategy is incorporated into the local authority’s plan under the 2004 Act, then its duty under section 2 of the Measure is discharged.

### ***Section 5: Strategies prepared by other Welsh authorities***

21. **Section 5** makes provision about the strategies to be prepared by Welsh authorities other than the Welsh Ministers and local authorities. The Welsh Ministers may make regulations about the making, publication and review of their strategies and consultation on their strategies (subsection (3)).
22. Section 25 of the 2004 Act places a duty on a local authority to make arrangements to promote co-operation between the authority and its “relevant partners”, who are specified in subsection (4) of that section. Two of these partners are also Welsh authorities for the purpose of Part 1 of the Measure. They are a local health board and the Public Health Wales National Health Service Trust (if it is providing services in the area of the authority). These Welsh authorities can discharge their duty under section 2 of the Measure by having the strategy included as an integral part of the plans of each local authority with whom they enter into arrangements under the 2004 Act, rather than preparing and publishing a separate plan of their own (subsections (4) and (5)). A Welsh authority which exercises functions in relation to more than one local authority area will only discharge its duty to prepare and publish a strategy by having its strategy incorporated into each of the plans of the local authorities in question.

### ***Section 6: The Welsh authorities***

23. **Section 6** sets out which Welsh authorities are subject to the duty under Section 2 of the Measure. Subsection (2) allows for the list to be amended by order of the Welsh Ministers. Such an order would need to be approved by the Assembly before being made (see section 74(5)) and any person the Welsh Ministers intend to add must be consulted before being added to the list (subsection (3)).
24. Subsection (4) makes it clear that the only persons who can be included on the list are persons having functions of a public nature whose principal functions relate to one or more of the fields in Part 1 of Schedule 5 to the Government of Wales Act 2006. Tribunals which fall within this category are excluded.
25. Any person added to the list who has functions of both a public and a private nature may only be included in the list in relation to those of its functions which are of a public nature (subsection (5)).

### ***Section 7: Local authority duty to secure the availability of free childcare***

26. Subsection (1) places a duty on local authorities to secure free childcare places for certain children who are not of compulsory school age. The operation of this section depends upon further provision to be made in regulations by the Welsh Ministers about—
  - the type of childcare that must be provided,
  - the periods for which it is to be available,
  - the description of the child for whom the care is to be made available (including the age they must have attained).
27. In subsection (3) ‘childcare’ is defined as being either child minding or day care, of a sort which must be registered with the Welsh Ministers<sup>1</sup> under Part 2 of this Measure or care which is approved in accordance with a tax credits scheme made by Welsh Ministers.

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<sup>1</sup> The functions of the Welsh Ministers in respect of the registration and inspection of child minding and day care are discharged by the Care and Social Services Inspectorate for Wales.

***Section 8: Parental support services: powers of a local authority***

28. Subsection (1) gives local authorities a power to provide, secure or participate in the provision of parental support services. These services are defined in subsection (3) as training in parenting skills or any other service to promote or facilitate effective parenting. Authorities will be able to provide these services directly themselves, commission them from others or collaborate with others in the provision of them.
29. Subsection (2) requires that such parental support services as are provided by local authorities using their powers under subsection (1) must be provided free of charge.

***Section 9: Health support services: powers of a local authority***

30. Subsection (1) gives local authorities a power to provide, secure or participate in the provision of health support services. These services are defined in subsection (4) as services providing assistance in relation to the health of children or parents of children. But in the case of services to parents of children it is a condition of the exercise of the power that the assistance is necessary to secure the well-being of the children of those parents. Health support services under this section do not include the provision of medical, dental, ophthalmic or pharmaceutical services.
31. As with parental support services, authorities can either provide the services directly themselves, commission them from others or collaborate with others in the provision of them.
32. Subsection (2) requires that when exercising their powers under subsection (1) to provide, secure or participate in the provision of nursing services, local authorities must have the agreement of the relevant local health board.
33. Subsection (3) requires that health support and preventative services provided by local authorities using their powers under subsection (1) must be provided free of charge.

***Section 10: Regulations about services to tackle child poverty***

Section 10 does two main things.

34. First, it empowers the Welsh Ministers by regulations to require local authorities to secure, free of charge, the provision of parental support services or health support services of the kind described in sections 8 and 9 respectively (paragraphs (a) and (b) of subsection (1)). Such regulations may also specify—
  - the description of service that must be provided by the authority, and
  - the description of children and parents to whom the duty will apply.
35. Secondly, it empowers the Welsh Ministers to apply the duty to secure the provision of childcare under section 7(1) and any duty in regulations under this section to secure the provision of parental support services or health support services in only one or more parts of a local authority area (paragraphs (c) and (d) of subsection (1)).
36. Subsection (2) provides that where the Welsh Ministers specify that services are required to be provided by reference to an area, the area or areas may either be specified in the regulations or the regulations could require the local authority itself to specify one or more areas.

***Part 1, Chapter 2: Play and Participation***

***Section 11: Local authority duties in respect of play opportunities for children***

37. Subsection (1) provides that a local authority must carry out an assessment of sufficiency of play opportunities in its area in accordance with regulations made by

Welsh Ministers. This is a preliminary step in the performance of the duty set out in subsection (3).

38. Regulations may specify particular matters to be taken into account in assessing sufficiency, the date by which such a sufficiency assessment is to be undertaken, the frequency of assessment, when the assessment is to be published and when and how it should be reviewed.
39. Subsection (3) places a duty on a local authority to secure sufficient play opportunities in its area for children as far as reasonably practicable having regard to its assessment. Local authorities will have to have regard to any guidance issued by the Welsh Ministers under section 17(3) of the Measure.
40. Subsection (4) requires local authorities to publish information about play opportunities in their area and to keep this information up to date.
41. Subsection (5) provides that in securing sufficiency of play opportunities, a local authority should consider in particular the needs of disabled children, the needs of children of different ages and any guidance issued by Welsh Ministers.
42. Subsection (6) clarifies that play includes any recreational activity and that the reference to “sufficiency” in the duty at subsection (1) relates to the quantity and quality of play opportunities.

### ***Section 12: Participation of children in local authority decision making***

43. **Section 12** requires local authorities to make arrangements to promote and facilitate participation by children in decisions across the full range of authorities’ functions which affect them. “Children” for these purposes are defined in section 71 as persons below the age of 18.
44. Subsection (2) requires local authorities to publish information about its arrangements for participation and to keep the information up to date.
45. Subsection (3) repeals section 176 of the Education Act 2002 as amended. Section 176 placed a duty on local authorities and governing bodies in Wales to have regard to the Welsh Ministers’ guidance about consultation with pupils in connection with the taking of decisions affecting them. The new duty places a duty to make arrangements to promote and facilitate participation by children in decisions of the authority which might affect them. The old duty is overtaken by the new duty except with regards to decisions which are for the governing body of maintained schools and not the local authority, which are now the subject of separate provision in section 29B of the Education Act 2002 (inserted by section 157 of the Education and Skills Act 2008).

## ***Part 1, Chapter 3: Inspection, guidance and directions***

### ***Section 13: Inspection***

46. **Section 13** gives the Welsh Ministers power by regulations to provide for local authorities’ performance of the functions conferred by section 7 to 12 to be inspected and for the publication of inspection reports. The regulations can provide that inspections will be organised either by the Welsh Ministers or by Estyn (which is the inspectorate of education and training headed by Her Majesty’s Chief Inspector of Education and Training in Wales) or any other person under arrangements made with the Welsh Ministers. The regulations may provide that inspection reports are “privileged” for the purposes of the law of defamation unless it can be shown that publication has been made with malice.

### ***Section 14: Powers of entry***

47. **Section 14** provides a power of entry at any reasonable time to any local authority premises or premises used in connection with the provision of services or facilities by another person under arrangements with a local authority in the performance of the relevant functions under this Part. This does not include the power to enter premises used wholly or mainly as a private dwelling.

### ***Section 15: Powers of inspection***

48. **Section 15** sets out the powers of inspection of those who enter premises for that purpose. It includes a power to seize and remove documents or anything else relevant to the discharge of the functions in question. It also includes power to require access to records or documents which may be stored on a computer. A person who obstructs an inspector exercising a power of entry or inspection, or who fails to comply with the requirement of an inspector, commits an offence, punishable on conviction in a magistrates' court with a fine not exceeding level 4 on the standard scale (currently £2,500).

### ***Section 16: Power to require information***

49. This section empowers the Welsh Ministers to require a local authority, or any person with whom the local authority has entered into arrangements in the exercise of the functions under sections 7 to 10, to provide them with relevant information, documents or records. The power extends to any information, documents or records which relate to the exercise of functions under sections 7 to 12 and which the Welsh Ministers consider necessary for the purposes of their functions under this Part. The power also applies where a person other than the Welsh Ministers is carrying out inspections as provided for by regulations made under section 13(2).

### ***Section 17: Guidance***

50. This section requires Welsh authorities to have regard to guidance issued by the Welsh Ministers when exercising their functions where the guidance is about the exercise of the specific functions under sections 1 to 10 or more generally about action to promote the broad aims for contributing to the eradication of child poverty.
51. Subsection (3) makes separate provision requiring a local authority to have regard to any guidance issued under this section in relation to its functions under sections 11 and 12.

### ***Section 18: Directions***

52. **Section 18** gives a power to Welsh Ministers to direct a Welsh authority to take action to secure compliance with the duties under sections 2, 7, 10, 11 or 12 where it is felt that the Welsh authority is failing or is likely to fail to comply with those duties.

## **Part 2: Child Minding and Day Care for Children**

### ***Section 19: Meaning of “child minding” and “day care for children”***

53. **Section 19** defines “child minding” and “day care for children” for the purpose of regulating these activities under Part 2 of the Measure.
54. A person is a “child minder” if they look after one or more children under the age of eight on domestic premises for reward.
55. A person provides “day care for children” if they provide care at any time for children under the age of eight on premises other than domestic premises.
56. Subsection (3) provides the Welsh Ministers with a power by order to change the ages referred to in the definitions of “child minder” and “day care for children” and to specify



circumstances which will amount to exceptions from the definitions. A person whose activity falls within the circumstances specified by order will not be a child minder or a provider of day care (as the case may be) and will not be required to register either under section 21 or section 23. Subsection (5) sets out a non-exhaustive list of the kinds of matters in relation to which exceptions may be made: (a) the category of person providing the child minding or day care; (b) the child or children for whom it is provided; (c) the nature of the child minding or day care; (d) the premises on which it is provided; (e) the times during which it is provided and (f) the arrangements under which it is provided.

57. The principal factor which distinguishes child minding from day care is whether or not children are cared for on “domestic premises”, which are defined in subsection (6) as any premises which are wholly or mainly used as a private dwelling.

### ***Section 20: Register of child minders***

58. **Section 20** makes it a requirement for the Welsh Ministers to maintain a register of all persons registered as child minders under this Part of the Measure.

### ***Section 21: Duty of child minders to register***

59. This section places a duty on child minders in Wales to register with the Welsh Ministers. A person must register as a child minder with the Welsh Ministers before acting as a child minder in Wales (subsection (1)). The Welsh Ministers may serve an enforcement notice on any person they consider is acting as a child minder without being registered, as a preliminary step to further enforcement measures if the notice is not complied with (subsection (2)). Enforcement notices have effect for one year from the date of service. An unregistered child minder commits an offence if that person has been served with an enforcement notice and goes on to act as a child minder without reasonable excuse (subsection (5)). Subsection (6) provides that a person convicted in a magistrates’ court of an offence under subsection (5) is liable to a fine not exceeding level 5 on the standard scale (currently £5000).

### ***Section 22: Register of providers of day care for children***

60. **Section 22** makes it a requirement for the Welsh Ministers to maintain a register of all persons registered to provide day care for children under this Part of the Measure.

### ***Section 23: Duty of day care providers to register***

61. **Section 23** places a duty on any person (whether a natural person or a body of persons corporate or unincorporated) who provides day care for children in Wales to register with the Welsh Ministers. A person who does so without registering and without reasonable excuse commits an offence. Subsection (3) provides that a person convicted by a magistrates’ court of an offence under subsection (2) is liable to a fine not exceeding level 5 on the standard scale (currently £5000).

### ***Section 24: Applications for registration: child minding***

62. **Section 24** and regulations to be made under this section set out what a person who wishes to register as a child minder must do in order to make a valid application for registration. It also places a duty on the Welsh Ministers to grant an application for registration if certain conditions are met and a duty to refuse an application for registration if those conditions are not met.
63. Subsection (2) provides that an application must give information about matters as required by regulations, give other information reasonably required by the Welsh Ministers and be accompanied by a fee set in regulations. Under subsection (3) the Welsh Ministers must grant an application unless the applicant is either disqualified under section 38 or it appears that the requirements for registration as a child minder

are not satisfied or are not likely to continue to be satisfied. The requirements for registration as a child minder are to be set out in regulations under section 25. Where the Welsh Ministers are not required to grant the application under subsection (3), they must refuse it (subsection (4)).

***Section 25: Prescribed requirements for registration as a child minder***

64. This section sets out the types of things which regulations may prescribe as requirements for registration as a child minder.

***Section 26: Applications for registration: day care for children***

65. **Section 26** and regulations to be made under this section set out what a person who wishes to register as a provider of day care for children must do in order to make a valid application for registration. It also places a duty on the Welsh Ministers to grant an application for registration if certain conditions are met and a duty to refuse an application for registration if those conditions are not met.
66. Subsection (2) provides that an application must give information about matters as required by regulations, give other information reasonably required by the Welsh Ministers and be accompanied by a fee set in regulations. Under subsection (3) the Welsh Ministers must grant an application unless the applicant is either disqualified under section 38 or it appears that the requirements for registration as a day care provider are not satisfied and are not likely to continue to be satisfied. The requirements for registration as a provider of day care for children are to be set out in regulations under section 27. Where the Welsh Ministers are not obliged to grant an application under subsection (3), they must refuse it (subsection (4)).

***Section 27: Prescribed requirements for registration of providers of day care for children***

67. This section sets out the types of things which regulations may prescribe as requirements for registration as a provider of day care for children.

***Section 28: Entry on the register and certificates***

68. Subsection (1) provides that if an application under section 24(1) is granted, the Welsh Ministers must register the applicant on the child minders register as a child minder and issue the applicant with a certificate of registration stating that the applicant is registered.
69. Subsection (2) provides that if an application under section 26(1) is granted, the Welsh Ministers must register the applicant as a day care provider in respect of the premises in question and issue the applicant with a certificate of registration stating that the applicant is registered.
70. Subsection (3) provides for the Welsh Ministers to set out in regulations the information which a certificate of registration must contain.
71. Subsection (4) requires the Welsh Ministers to give the registered person an amended certificate if there has been a change of circumstances which requires an amendment to be made to the certificate.
72. Subsection (5) requires the Welsh Ministers to provide a copy of the certificate on payment by the registered person of any prescribed fee, if they are satisfied that the original certificate has been lost or destroyed.

***Section 29: Conditions on registration***

73. **Section 29** empowers the Welsh Ministers to impose conditions on the registration of a person who acts as a child minder or a day care provider. Conditions may be



imposed either on first registration or at any subsequent time. The Welsh Ministers as the registration authority have discretion to decide what conditions to impose and under subsection (3) may also vary or remove any condition. Subsection (4) provides that a registered person commits an offence if, without reasonable excuse, they fail to comply with any condition. Subsection (5) provides that a person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5000).

### ***Section 30: Regulations governing activities***

74. **Section 30** provides for the Welsh Ministers to make regulations imposing requirements about how registered persons carry on the regulated activity.
75. Regulations may impose requirements about (amongst other things) the welfare and development of the children concerned; suitability to look after, or be in regular contact with, the children concerned; qualifications and training; the maximum number of children who may be looked after and the number of persons required to assist in looking after them; the maintenance, safety and suitability of the premises and equipment; the procedures for dealing with complaints; the supervision of staff; the keeping of records; and the provision of information.
76. Regulations may also require any person to meet factors, standards or other matters which may be prescribed by or referred to in the regulations and the Welsh Ministers may take any failing by any person into account when exercising their functions under this Part of the Measure and in any court proceedings, whether civil or criminal. Subsection (4) provides that the regulation-making power includes a power to make a breach of the regulations a criminal offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale (currently £5000).

### ***Section 31: Cancellation of registration***

77. Subsection (1) provides that Welsh Ministers must cancel the registration of a registered child minder or day care provider if that person has become disqualified from registration under section 38.
78. Subsection (2) provides that the Welsh Ministers may exercise their judgment to cancel a person's registration if the suitability requirements under section 25 or section 27 have ceased to or will cease to be satisfied, if the person has failed to comply with a condition of their registration or they have failed to pay a prescribed fee.
79. Subsection (3) prevents cancellation if there has been a requirement imposed on the registered person to make any changes or additions to any services, equipment or premises and the person has not had a fair chance to meet the requirement because the time set by the registration authority for complying has not expired and the only defect or insufficiency is due to the changes or additions not having yet been made.
80. A cancellation under this section must be in writing (subsection (4)) and is subject to the requirements about procedure set out in section 36.
81. In addition, subsection (5) provides that the Welsh Ministers may prescribe in regulations other circumstances in which the registration of a person may be cancelled.

### ***Section 32: Suspension of registration***

82. **Section 32** allows the Welsh Ministers to make regulations to set circumstances when the registration of a child minder or day care provider may be temporarily suspended. The regulations can provide for a maximum period of suspension and can also provide for suspension at the request of the registered person.
83. Subsection (3) requires that regulations include a right of appeal to the First-tier Tribunal against suspension, except in relation to voluntary suspension at the request of

the registered person (subsection (4)). A registered person must not act as a child minder or provide day care on the premises for which they are registered whilst suspended. Subsection (7) provides that a person is guilty of an offence if they act as a child minder or provide day care on premises without reasonable cause whilst their registration is suspended and is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5000).

### ***Section 33: Voluntary removal from the register***

84. **Section 33** provides for a child minder or day care provider to voluntarily remove their name from the relevant register by giving notice to the Welsh Ministers.
85. The Welsh Ministers must not comply with a request for voluntary removal if they have given notice of their intention to cancel the person's registration and they still intend to do so (subsection (3)). Neither can the Welsh Ministers comply with such a request if they have given notice of their decision to cancel registration and the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not been determined (subsection (4)).

### ***Section 34: Protection of children in an emergency: cancellation of registration***

86. **Section 34** provides for the Welsh Ministers to apply to a justice of the peace for an order cancelling a person's registration with immediate effect if it appears that a child is suffering or is likely to suffer significant harm. Such an application may be made without notice and any order made must be in writing. The Welsh Ministers must serve a copy of the order on the registered person as soon as possible, together with any written statement made in support of the application and notice of the right of appeal. Subsection (7) requires the Welsh Ministers to notify the relevant local authority of the order.
87. Subsection (8) defines "harm" as having the same meaning as in the Children Act 1989 ("the 1989 Act") and the question of whether harm is significant is to be determined in accordance with section 31(10) of the 1989 Act. In the 1989 Act "harm" means ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another. The provisions of section 31(10) of the 1989 Act provide that where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.

### ***Section 35: Protection of children in an emergency: changes to conditions***

88. **Section 35** allows the Welsh Ministers to vary or remove existing conditions, or add new conditions, to a person's registration with immediate effect where they have reasonable cause to believe that there is a risk of significant harm to a child if they do not do so. The Welsh Ministers must take such action by written notice to be served on the registered person by delivering it to them or by sending it by post to that person's last known address. The notice must include the Welsh Ministers' reasons for believing that a child is at risk of significant harm, specify the condition varied, removed or imposed and explain the right of appeal to the First-tier Tribunal under section 37.

### ***Section 36: Procedure for taking certain steps***

89. **Section 36** sets out the procedures for the Welsh Ministers to give advance notice to a registered person or applicant for registration if they propose to take one of a number of steps affecting registration. The steps are: refusing an application for registration; imposing a new condition on a person's registration; varying or removing any condition imposed on a person's registration; refusing to grant an application for the variation or removal of any such condition; cancelling a person's registration.

90. Subsection (2) provides that section 36 does not apply to actions taken in response to emergency situations under section 34 (protection of children in an emergency: cancellation of registration) or section 35 (protection of children in an emergency: changes to conditions).
91. When the Welsh Ministers have served notice of their proposal, subsection (5) prevents them from taking the proposed step until 28 days have passed from the date of service of the notice, unless the recipient of the notice notifies the Welsh Ministers that they wish to object to the step being taken. If the recipient gives notice that they wish to object, the Welsh Ministers must provide the recipient of a notice with an opportunity to object before taking the proposed step (subsection (6)). If the Welsh Ministers decide to take the step, they must give the recipient notice of their decision (subsection (8)). This duty applies whether or not the recipient gives notice of a wish to object.

### ***Section 37: Appeals***

92. **Section 31** provides for appeals to be made against the decisions of the Welsh Ministers to the First-tier Tribunal<sup>2</sup>.
93. Subsection (1) allows an applicant for registration or (as the case may be) a registered person to appeal against a decision of the Welsh Ministers to refuse an application for registration, to impose, vary or remove conditions of registration, to refuse an application to vary or remove a condition, or to cancel registration.
94. Subsection (2) also allows for an appeal to the First-tier Tribunal by an applicant for registration or (as the case may be) a registered person in respect of a determination (other than one of the decisions in subsection (1)) which the Welsh Ministers specify in regulations. Appeals may also be made by a registered person against whom an order is made under section 34 (protection of children in an emergency: cancellation of registration) and a registered person who is given notice under section 35 (protection of children in an emergency: changes to conditions).
95. Subsections (3) and (4) set out the actions that may be taken by the First-tier Tribunal on appeal.

### ***Section 38: Disqualification from registration***

96. **Section 38** allows the Welsh Ministers to make regulations which set out circumstances under which a person is disqualified from registration. Subsection (3) sets out the range of circumstances which may be included in the regulations. The list of circumstances is not an exhaustive list.
97. Subsection (4) provides that regulations may also disqualify a person from registration if someone they live with or who works in their household is disqualified.
98. Subsection (5) provides that where a person is disqualified they can apply to the Welsh Ministers for their disqualification to be waived if the person has disclosed the disqualification to the Welsh Ministers and the Welsh Ministers give their consent in writing.

### ***Section 39: Consequences of disqualification***

99. **Section 39** sets out the effect of disqualification on a person. A person who is disqualified under section 38 must not act as a child minder in Wales or provide day care in Wales or be directly concerned in the management of any provision in Wales; neither can a registered person employ a disqualified person in connection with the provision of day care or child minding.

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<sup>2</sup> The First-tier Tribunal is divided into 5 different chambers. Appeals against decisions of a registration authority under these provisions are to the First-tier Tribunal's Health, Education and Social Care Chamber.

100. Subsection (3) provides that contravention of subsection (1), by the person disqualified, or contravention of subsection (2), by an employer, is an offence. In both cases the offence is punishable on summary conviction by imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (currently £5000), or both. Where the offenders' disqualification is the result of his being part of the same household as another person who is disqualified or the offence is one of employing a disqualified person, then it will be a defence for a person to prove that they didn't know and had no reasonable grounds for believing that they lived with or in a household with or had employed a disqualified person.

#### ***Section 40: Inspection***

101. Section 40 gives the Welsh Ministers the power by regulations to provide for child minding and day care providers in Wales to be inspected and for the publication of inspection reports. The regulations can provide that inspections will be organised either by the Welsh Ministers or by Estyn (which is the inspectorate of education and training headed by Her Majesty's Chief Inspector of Education and Training in Wales) or any other person under arrangements made with the Welsh Ministers. The regulations may provide that inspection reports are "privileged" for the purposes of the law of defamation unless it can be shown that publication has been made with malice.

#### ***Section 41: Powers of entry***

102. Section 41 provides powers of entry for any person authorised by the Welsh Ministers at any reasonable time to enter premises in Wales on which child minding or day care is at any time provided. Subsection (2) provides an authorised person with a power of entry to premises if there is reasonable cause to believe that a child is being looked after there in contravention of the provisions of Part 2 of the Measure.

#### ***Section 42: Powers of inspection***

103. Section 42 sets out the powers of inspection of those who enter premises for that purpose. It includes a power to seize and remove documents or anything else which may be evidence of failure to comply with regulatory requirements. It also includes power to require access to records or documents which may be stored on a computer. A person who obstructs an inspector exercising a power of entry or inspection power or who fails to comply with the requirement of an inspector commits an offence and is liable on conviction in a magistrates' court to a fine not exceeding level 4 on the standard scale (currently £2,500).

#### ***Section 43: Power of constable to assist in exercising powers of entry***

104. Section 43 provides for a person authorised to enter premises under section 41, where attempts to exercise inspection powers have been thwarted, to apply to a court for a warrant authorising a constable to assist the authorised person, using reasonable force if necessary. The application for a warrant may be in response to a person preventing exercise of the power of entry or another inspection power under section 42.

#### ***Section 44: Supply of information to the Welsh Ministers***

105. In addition to the power to see documents and other materials in the course of inspection, the Welsh Ministers may also require any registered child minder or day care provider to provide them with any information connected with that person's activities as a child minder or day care provider which the Welsh Ministers consider necessary for the purposes of their functions under this Part.

#### ***Section 45: Supply of information to local authorities***

106. Section 45 provides for the Welsh Ministers to provide information to local authorities about those who are registered to provide child minding or day care. This is necessary

to enable the local authority to provide information about the availability of childcare in fulfilment of its functions under section 27 of the Childcare Act 2006 (duty to provide information, advice and assistance). The sharing of the information prescribed is triggered by one of the following steps: granting registration; issuing a notice of intention to cancel registration; cancelling registration; suspending registration; removing a person from the register at that person's request and if a justice of the peace makes an order under section 34(2). Subsection (5) provides for the Welsh Ministers to provide information to a person exercising statutory functions (for purposes connected to those functions) about whether a person is registered as a child minder or day care provider.

***Section 46: Offence of making false or misleading statement***

107. A person will be guilty of an offence under subsection (1) if they knowingly make a false or misleading statement when applying for registration and will be liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5000).

***Section 47: Penalty notices***

108. **Section 47** provides for the Welsh Ministers to impose fixed penalty notices on registered persons where they are satisfied that a person has committed a relevant offence. The Welsh Ministers have power to set out in regulations those offences which will be capable of being dealt with by a fixed penalty notice. The proposal to impose a penalty notice offers the registered person the opportunity of paying a penalty in respect of an identified breach and thereby discharging all criminal liability for the breach in question. Where a notice has been issued but not yet paid, proceedings may not be commenced for the offence to which the notice relates until such time as the period specified in the notice has expired. If the person pays the penalty in accordance with the notice, they cannot then be convicted of an offence to which the notice relates. Penalties are payable to the Welsh Ministers.

***Section 48: Penalty notices: supplementary provisions***

109. Regulations under section 48 can make provision about the form and content of the penalty notices including monetary amounts and time limits for payment, and actions to be taken if penalty is not paid in accordance with the penalty notice. Subsection (2) provides that regulations may make provision for different penalties to be payable in different cases and also for the amount to differ if paid at different times. The amount prescribed to be paid under a penalty notice cannot exceed a half of the maximum amount of a fine that would have to be paid on conviction.

***Section 49: Time limit for proceedings***

110. **Section 49** sets the time limit for bringing a prosecution at one year from the date on which sufficient evidence to warrant the proceedings comes to the prosecutor's knowledge. This is subject to the overall limit that no prosecution may be brought more than three years after the commission of the offence.

***Section 50: Offences by bodies corporate***

111. **Section 50** provides that where an offence is committed by a body corporate, officers of that body may be liable to be prosecuted and punished accordingly, if it is proved that an offence is committed with their consent or connivance or is due to any neglect on their part.

***Section 51: Unincorporated associations***

112. **Section 51** makes provision that where an offence is committed by an unincorporated association, proceedings must be brought in the name of the association (and not in the name of any of its members). Rules of court apply in relation to the service of



documents on an unincorporated association as if they were a body corporate. It also provides, just as with a body corporate, that an officer or member of the association is guilty of an offence if it is committed with their consent or connivance or is due to any neglect on their part of an officer of the association or a member of its governing body and they may be liable to prosecution as well as the association. Subsection (3) makes provision about the circumstances in which an association may be represented in proceedings by a duly authorised person. Subsection (4) provides that a fine imposed on an unincorporated association is to be paid out of the association's funds.

### ***Section 52: Functions of local authorities***

113. Regulations made under this section can set out and make provision for a local authority to secure provision of information or advice about child minding and day care and to secure the provision of training about the provision of child minding and day care.

### ***Section 53: Fees***

114. Regulations can set out and make provision for registered child minders or day care providers to pay fees to the Welsh Ministers, including the circumstances when such fees may be waived.

### ***Section 54: Co-operation between authorities***

115. **Section 54** provides for the Welsh Ministers to request the help of a local authority to assist in the exercise of the Welsh Ministers' functions. A local authority must comply with the request if it is compatible with its own statutory and other duties and does not unduly prejudice the discharge of any of its functions.

### ***Section 55: Notices***

116. **Section 55** makes provision about notices to be issued by a child minder or day care provider to the Welsh Ministers under section 33 (voluntary removal from the register) or notices issued by the Welsh Ministers under section 36 (procedure for taking certain steps).

### ***Section 56: Death of registered person***

117. **Section 56** provides the power to make regulations to deal with the position where a sole registered person for a day care business dies so that the day care business can be carried on for a certain period. The section also allows for regulations to impose a requirement on the personal representatives of a child minder or day care provider to notify the Welsh Ministers of the death.

## **Part 3: Integrated Family Support Teams**

### ***Section 57: Establishment of integrated family support teams***

118. **Section 57** places a duty on local authorities to establish one or more integrated family support teams (IFST) in their area. It also places duties on the Local Health Board which covers the area to act as a partner to actively assist the local authority in establishing an IFST and actively assist a local authority to discharge its duties with regard to IFST. It enables two or more local authorities to act together to establish one or more IFSTs for both (or all) their areas.

### ***Section 58: Functions of integrated family support teams***

119. **Section 58** sets out what an IFST does. The IFST's function is to deal with family cases where the needs of adults in relation to alcohol or drugs, domestic violence, mental health or learning disability are linked to adverse consequences for the children of those adults. The teams will bring together professionals from the local authority and Local



Health Board involved to address both adults' and childrens' issues within a single organisation.

120. Under subsection (2) the Welsh Ministers may prescribe in regulations functions of local authorities and Local Health Boards which are relevant to the types of cases which will be dealt with by the teams. These functions are defined in the Measure as "family support functions" and the local authority is to identify the family support functions which are to be carried out by an IFST. This assigning of functions will require the consent of the Local Health Board. The IFST is not a separate legal person; it is a vehicle established by the local authority with the participation of the Local Health Board within which each of those bodies will carry out particular functions collaboratively.
121. Subsection (5) makes clear that referrals to an IFST will come from the local authority.
122. Subsection (6) and (7) set out the types of case which can be referred to an IFST. These are families where a "parent" (as defined) has one of a number of specified difficulties and a child of that parent is either a "child in need" (as defined) or a "looked after child" (as defined). The provisions include a parent of an unborn child and also allow for referral of other individuals connected with the child.
123. Subsection (9) gives a team a specific duty to evaluate and record the effectiveness of its work. Subsection (11) specifies that the carrying out of local authority functions and the carrying out of Local Health Board functions remains the liability of those bodies. Subsection (12) makes clear that any functions assigned to the team are not wholly transferred to it but will continue to be exercised by the local authority or local health board in relation to those who are not, or cannot be referred to an IFST.

#### ***Section 59: Resources for integrated family support teams***

124. **Section 59** enables a local authority and a Local Health Board to make arrangements to pay for expenditure connected to establishing and running an IFST by paying directly or by contributing to a fund, established and maintained by the local authority. Subsection (2) provides for various practical aspects of funding of IFSTs to be set out in regulations. Subsection (3) covers resources other than cash for example pooling of staff, premises.

#### ***Section 60: Composition of integrated family support teams***

125. **Section 60** places a duty on a local authority to ensure that IFSTs include the relevant professionals who are prescribed in regulations. Regulations will therefore be able to determine the professional make-up of the teams. Subsection (2) gives a local authority power to include other persons (in addition to those prescribed) in the IFST if they have the consent of the Local Health Board.

#### ***Section 61: Establishment of integrated family support boards***

126. **Section 61** places a duty on each local authority to establish an Integrated Family Support Board ("IFS Board") for its area. Section 58(4) requires an IFST to carry out its functions under the direction of its IFS board. The IFS Board must include:
  - the director of social services;
  - the statutory lead director of children and young people services (under section 27 of the 2004 Act) if this is not the director of social services;
  - the lead officer for children and young people services from the Local Health Board.
127. Provisions enable local authorities to co-opt other members to the IFS Board with the consent of the Local Health Board and to pay remuneration and allowances to co-opted members appointed under subsection (5).

***Section 62: Functions of integrated family support boards***

128. **Section 62** expresses as objectives the functions of an IFS Board. Subsection (2) enables the Welsh Ministers through their regulation-making powers to specify functions which would say how an IFS Board must meet the objectives. Within the list of the IFS Board's objectives, subsection (1)(b) includes the objective for the local authority and Local Health Board to promote good practice, whether by providing training or other means, within their areas that goes wider than the IFST itself.

***Section 63: Regulations about integrated family support teams and boards***

129. **Section 63** gives the Welsh Ministers power to make regulations about various aspects of the functioning of the IFST and the IFS Board.

***Section 64: Annual reports on integrated family support teams***

130. **Section 64** places a duty on IFSTs to provide an annual report on their effectiveness. The report must be made available at local level to the local authority, to the Local Health Board and to the Welsh Ministers.

***Section 65: Guidance about integrated family support teams***

131. **Section 65** requires that a local authority, a Local Health Board, IFST and the IFS Board have regard to any guidance issued by the Welsh Ministers in respect of exercising their powers / functions under Part 3 of the Measure.

**Part 4: Miscellaneous and General**

***Section 66: Family social work standards officers***

132. **Section 66** requires each local authority area to appoint a designated officer (family social work standards officer) who will have specific responsibility for raising standards in social work practice and promoting use of evidence-based research in relation to children and persons who care for them. The remit of the family social work standards officer extends to all social work practice which has a bearing on children.

***Section 67: Children's needs arising from community care needs of their parents***

133. **Section 67** imposes a duty on local authorities, when assessing the needs of adults for community care services, to consider also the needs of any children for whom the adult has caring responsibilities and consider whether the impact of the adults' needs on their ability to parent indicate that the child in turn is a "child in need" in the terms of section 17 of the 1989 Act.
134. Having considered whether or not the child does appear to be a child in need, the local authority must decide whether to make the child the subject of an assessment under section 17 of the 1989 Act and then whether or not to provide any services.
135. Subsection (4) then requires the local authority to take account of the consideration given to the child's needs in deciding what are the needs of the parent are under section 47(1)(b) of the National Health Service and Community Care Act 1990.

***Section 68: Children's needs arising from the health conditions of their parents***

136. This section complements the provision in section 67 by imposing a duty on NHS bodies, when certain health services are provided, to make suitable arrangements to consider whether the health needs of a parent are such that any children may be eligible for services from a local authority whether under section 17 of the 1989 Act or another provision. The health body must also make suitable arrangements for referral of appropriate cases to the relevant local authority but this duty is subject to any duty owed to the child or carer in relation to disclosure of information whether under a common

law duty of confidentiality or any duty owed to the subject of the information under the Data Protection Act 1998.

***Section 69: Social services functions***

137. **Section 69** provides for a consequential change to Schedule 1 of the Local Authority Social Services Act 1970 to extend the meaning of “social services functions” to include the functions relating to an IFST and IFS Boards, family social work standards officers (section 66) and consideration of the needs of children when assessing parents (section 67).

***Section 70: Guidance***

138. **Section 70** sets out certain provisions in respect of any guidance issued by the Welsh Ministers to bodies that must have regard to it.

***Section 71: General interpretation***

139. **Section 71** sets out definitions for terms used within the Measure.

***Section 72: Minor and consequential amendments***

140. Minor and consequential amendments are set out in Schedule 1.

***Section 73: Repeals***

141. Repeals are set out in Schedule 2.

***Section 74: Orders and Regulations***

142. Any power of the Welsh Ministers to make an order or regulations under the Measure is exercisable by statutory instrument. Subsection (2) to (5) set out the arrangements in respect of orders and regulations. The power to make regulations may be exercised so as to make different provision for different cases or areas or purposes and to make general provision or provision which is specific to a particular case or particular class of cases.

***Section 75: Commencement***

143. **Section 75** sets out the arrangements for commencement of the Measure in respect of Sections 1, 2, 3, 74, 75 and 76. All other remaining provisions come into force when commenced by the Welsh Ministers by order.

***Section 76: Short title***

144. The short title of the Measure is ‘the Children and Families (Wales) Measure 2010’.