



# Children and Families (Wales) Measure 2010

## 2010 nawm 1

### PART 2

#### CHILD MINDING AND DAY CARE FOR CHILDREN

##### *Main terms*

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

- (1) This section applies for the purposes of this Part.
- (2) A person acts as a child minder if the person looks after one or more children under the age of [<sup>F1</sup>twelve] on domestic premises for reward; and “child minding” is to be interpreted accordingly.
- (3) A person provides day care for children if the person provides care at any time for children under the age of [<sup>F2</sup>twelve] on premises other than domestic premises; and “day care for children” and “day care” are to be interpreted accordingly.
- (4) The Welsh Ministers may by order—
  - (a) amend subsection (2) or (3) to substitute a different age;
  - (b) provide that, in the circumstances specified in the order, a person is not acting as a child minder for the purposes of this Part;
  - (c) provide that, in the circumstances specified in the order, a person is not providing day care for the purposes of this Part.
- (5) The circumstances specified in an order may relate to one or more of the following matters (among others)—
  - (a) the person providing the child minding or day care;
  - (b) the child or the children for whom it is provided;
  - (c) the nature of the child minding or day care;

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- (d) the premises on which it is provided;
  - (e) the times during which it is provided;
  - (f) the arrangements under which it is provided.
- (6) In this section “domestic premises” means any premises which are wholly or mainly used as a private dwelling.

#### Textual Amendments

- F1** Word in [s. 19\(2\)](#) substituted (1.4.2016) by [The Regulation of Child Minding and Day Care \(Wales\) Order 2016 \(No. 98\)](#), arts. 1(2), [3\(a\)](#)
- F2** Word in [s. 19\(3\)](#) substituted (1.4.2016) by [The Regulation of Child Minding and Day Care \(Wales\) Order 2016 \(No. 98\)](#), arts. 1(2), [3\(b\)](#)

#### Commencement Information

- I1** S. 19 in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))

### *Registration of child minding*

## 20 Register of child minders

The Welsh Ministers must maintain a register (“the child minders register”) of all persons who are registered as child minders under this Part.

#### Commencement Information

- I2** [S. 20](#) in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))

## 21 Duty of child minders to register

- (1) A person must not act as a child minder in Wales unless that person is registered as a child minder by the Welsh Ministers under this Part.
- (2) If it appears to the Welsh Ministers that a person is acting as a child minder without being registered to do so under this Part, the Welsh Ministers may serve a notice (“an enforcement notice”) on that person.
- (3) An enforcement notice may be served on a person—
  - (a) by delivering it to the person, or
  - (b) by sending it by post to the person's last known address.
- (4) An enforcement notice has effect for a period of one year beginning with the date on which it is served.
- (5) A person (“P”) who acts as a child minder in contravention of subsection (1) commits an offence if—
  - (a) an enforcement notice has effect in relation to P, and
  - (b) P acts as a child minder without reasonable excuse.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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#### Commencement Information

**I3** [S. 21](#) in force at 1.4.2011 by [S.I. 2010/2582](#), [art. 2](#), [Sch. 1](#) (with [Schs. 2, 3](#))

### *Registration of day care for children*

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

The Welsh Ministers must maintain a register (“the day care for children register”) of all persons who are registered to provide day care for children under this Part and of the premises on which they are authorised to provide it under this Part.

#### Commencement Information

**I4** [S. 22](#) in force at 1.4.2011 by [S.I. 2010/2582](#), [art. 2](#), [Sch. 1](#) (with [Schs. 2, 3](#))

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

- (1) A person must not provide day care for children on any premises in Wales unless that person is registered to provide day care for children on those premises by the Welsh Ministers under this Part.
- (2) A person who contravenes subsection (1) without reasonable excuse commits an offence.
- (3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Commencement Information

**I5** [S. 23](#) in force at 1.4.2011 by [S.I. 2010/2582](#), [art. 2](#), [Sch. 1](#) (with [Schs. 2, 3](#))

### *Process and requirements of registration*

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

- (1) A person who proposes to act as a child minder may make an application to the Welsh Ministers for registration as a child minder.
- (2) An application must—
  - (a) give any prescribed information about prescribed matters,
  - (b) give any other information which the Welsh Ministers reasonably require the applicant to give, and
  - (c) be accompanied by any prescribed fee.
- (3) The Welsh Ministers must grant an application if—
  - (a) the applicant is not disqualified from registration under section 38, and

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- (b) it appears to the Welsh Ministers that all the prescribed requirements for registration as a child minder are satisfied and are likely to continue to be satisfied.
- (4) The Welsh Ministers must refuse any application under subsection (1) which subsection (3) does not require them to grant.

#### Commencement Information

**I6** S. 24 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

## 25 Prescribed requirements for registration as a child minder

The prescribed requirements for registration as a child minder may include requirements relating to—

- (a) the applicant;
- (b) the premises on which the child minding is to be provided;
- (c) the arrangements for child minding on those premises;
- (d) any person who may be caring for children on those premises;
- (e) any person who may be on those premises.

#### Commencement Information

**I7** S. 25 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

## 26 Applications for registration: day care for children

- (1) A person who proposes to provide day care for children on particular premises may make an application to the Welsh Ministers for registration as a provider of day care on those premises.
- (2) An application must—
  - (a) give any prescribed information about prescribed matters,
  - (b) give any other information which the Welsh Ministers reasonably require the applicant to give, and
  - (c) be accompanied by any prescribed fee.
- (3) The Welsh Ministers must grant an application if—
  - (a) the applicant is not disqualified from registration under section 38, and
  - (b) it appears to the Welsh Ministers that all the prescribed requirements for registration of day care providers are satisfied and are likely to continue to be satisfied.
- (4) The Welsh Ministers must refuse any application under subsection (1) which subsection (3) does not require them to grant.

#### Commencement Information

**I8** S. 26 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

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## 27 Prescribed requirements for registration of providers of day care for children

The prescribed requirements for registration of providers of day care for children may include requirements relating to—

- (a) the applicant;
- (b) the premises on which the day care is to be provided;
- (c) the arrangements for day care on those premises;
- (d) any person who may be caring for children on those premises;
- (e) any other person who may be on those premises.

### Commencement Information

**I9** [S. 27](#) in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))

## 28 Entry on the register and certificates

- (1) If an application under section 24(1) is granted, the Welsh Ministers must—
  - (a) register the applicant in the child minders register as a child minder, and
  - (b) give the applicant a certificate of registration stating that the applicant is registered.
- (2) If an application under section 26(1) is granted, the Welsh Ministers must—
  - (a) register the applicant as a day care provider in respect of the premises in question, and
  - (b) give the applicant a certificate of registration stating that the applicant is registered.
- (3) A certificate of registration given to the applicant under subsection (1) or (2) must contain prescribed information about prescribed matters.
- (4) If there is a change in circumstances which requires the amendment of a certificate of registration, the Welsh Ministers must give the registered person an amended certificate.
- (5) If the Welsh Ministers are satisfied that a certificate of registration has been lost or destroyed, the Welsh Ministers must give the registered person a copy, on payment by the registered person of any prescribed fee.

### Commencement Information

**I10** [S. 28](#) in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))

## 29 Conditions on registration

- (1) The Welsh Ministers may impose such conditions as they think fit on the registration under this Part of a person who acts as a child minder or a person who provides day care for children.
- (2) This power may be exercised at any time when the Welsh Ministers register a person under section 24 or section 26 or at any subsequent time.

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- (3) The Welsh Ministers may at any time vary or remove any condition imposed under this section.
- (4) A person registered under this Part commits an offence if, without reasonable excuse, that person fails to comply with any condition imposed under this section.
- (5) 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.

**Modifications etc. (not altering text)**

- C1** S. 29 excluded (1.4.2016) by [The Regulation of Child Minding and Day Care \(Wales\) Order 2016](#) (No. 98), arts. 1(2), **12(2)(3)(a)** (with art. 11)
- C2** S. 29(4) excluded (1.4.2016) by [The Regulation of Child Minding and Day Care \(Wales\) Order 2016](#) (No. 98), arts. 1(2), **8(2)(3)(a)** (with art. 6)

**Commencement Information**

- III** S. 29 in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, **Sch. 1** (with Schs. 2, 3)

### 30 Regulations governing activities

- (1) The Welsh Ministers may make regulations governing the activities of registered persons who act as child minders, or provide day care, on premises in Wales.
- (2) The regulations under this section may deal with the following matters (among others)
  - (a) the welfare and development of the children concerned;
  - (b) suitability to look after, or be in regular contact with, the children concerned;
  - (c) qualifications and training;
  - (d) the maximum number of children who may be looked after and the number of persons required to assist in looking after them;
  - (e) the maintenance, safety and suitability of premises and equipment;
  - (f) the procedures for dealing with complaints;
  - (g) the supervision of staff;
  - (h) the keeping of records;
  - (i) the provision of information.
- (3) If the regulations require any person (other than the Welsh Ministers) to have regard to or meet factors, standards or other matters prescribed by or referred to in the regulations, they may also provide for any allegation that the person has failed to do so to be taken into account—
  - (a) by the Welsh Ministers in the exercise of their functions under this Part, or
  - (b) in any proceedings under this Part.
- (4) Regulations may provide—
  - (a) that a registered person who without reasonable excuse contravenes, or otherwise fails to comply with, any requirement of the regulations is guilty of an offence; and
  - (b) that a person guilty of the offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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#### Commencement Information

**I12** S. 30 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

### *Cancellation and suspension of registration*

## **31 Cancellation of registration**

- (1) The Welsh Ministers must cancel the registration of a person registered under this Part if it appears to them that the person has become disqualified from registration under section 38.
- (2) The Welsh Ministers may cancel the registration of a person registered under this Part if it appears to them that any of the following apply—
  - (a) the requirements for registration that apply in relation to the person's registration under section 25 or 27 have ceased, or will cease, to be satisfied;
  - (b) the person has failed to comply with a condition imposed on that person's registration under this Part;
  - (c) the person has failed to comply with a requirement imposed on that person by regulations under this Part;
  - (d) the person has failed to pay a prescribed fee.
- (3) Where a requirement to make any changes or additions to any services, equipment or premises has been imposed on a person registered under this Part, that person's registration may not be cancelled on the ground of any defect or insufficiency in the services, equipment or premises if—
  - (a) the time set for complying with the requirement has not expired, and
  - (b) it is shown that the defect or insufficiency is due to the changes or additions not having been made.
- (4) A cancellation under this section must be in writing.
- (5) The Welsh Ministers may prescribe other circumstances in which the registration of a person registered under this Part may be cancelled.

#### Modifications etc. (not altering text)

- C3** S. 31(2)(b) excluded (1.4.2016) by [The Regulation of Child Minding and Day Care \(Wales\) Order 2016 \(No. 98\)](#), arts. 1(2), **12(2)(3)(b)** (with art. 11)
- C4** S. 31(2)(b) excluded (1.4.2016) by [The Regulation of Child Minding and Day Care \(Wales\) Order 2016 \(No. 98\)](#), arts. 1(2), **8(2)(3)(b)** (with art. 6)

#### Commencement Information

**I13** S. 31 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

## **32 Suspension of registration**

- (1) Regulations may provide for the registration of any person under this Part to be suspended.
- (2) Regulations under subsection (1) may include (among other things) provision about—

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- (a) the period of suspension;
  - (b) the circumstances in which registration may be suspended;
  - (c) suspension of registration at the request of the registered person.
- (3) Regulations under subsection (1) must include provision conferring on the registered person a right of appeal to the First-tier Tribunal against suspension.
- (4) The duty in subsection (3) does not apply in relation to suspension at the request of the registered person.
- (5) A person registered under this Part for child minding by the Welsh Ministers must not act as a child minder in Wales at a time when that registration is suspended.
- (6) A person registered under this Part for providing day care on any premises by the Welsh Ministers must not provide day care on those premises at any time when that registration is suspended.
- (7) If a person contravenes subsection (5) or (6) without reasonable excuse, that person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Commencement Information

**I14** [S. 32](#) in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))

### 33 Voluntary removal from the register

- (1) A person registered under this Part may give notice to the Welsh Ministers to remove that person from the child minding register or (as the case may be) the day care for children register.
- (2) If a person gives notice under subsection (1), the Welsh Ministers must remove that person from the child minding register or (as the case may be) the day care for children register.
- (3) The Welsh Ministers must not act under subsection (2) if—
- (a) the Welsh Ministers have sent the person a notice (under section 36) of their intention to cancel the person's registration, and
  - (b) the Welsh Ministers still intend to take that step.
- (4) The Welsh Minister must not act under subsection (2) if—
- (a) the Welsh Ministers have sent the person a notice (under section 36) of their decision to cancel that person's registration, and
  - (b) the time within which an appeal under section 37 may be brought has not expired or, if such an appeal has been brought, it has not been determined.

#### Commencement Information

**I15** [S. 33](#) in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))



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### *Emergency protection*

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

- (1) In relation to a person registered under this Part, the Welsh Ministers may apply to [<sup>F3</sup>the family court] for an order cancelling the person's registration.
- (2) If it appears to [<sup>F4</sup>the court] that a child for whom child minding or day care is being, or may be, provided by that person is suffering or is likely to suffer significant harm, [<sup>F4</sup>the court] may make the order.
- (3) An application under subsection (1) may be made without notice.
- (4) An order under subsection (2)—
  - (a) must be made in writing, and
  - (b) has effect from the time when it is made.
- (5) If an order is made under subsection (2), the Welsh Ministers must serve on the registered person as soon as is reasonably practicable after the making of the order—
  - (a) a copy of the order,
  - (b) a copy of any written statement in support of the application for the order, and
  - (c) notice of any right of appeal conferred by section 37(2).
- (6) The documents mentioned in subsection (5) may be served on the registered person by—
  - (a) delivering them to the person, or
  - (b) sending them by post to the person's last known address.
- (7) If an order is made under subsection (2), the Welsh Ministers must, as soon as reasonably possible after the making of the order, notify the local authority in whose area the person concerned acts or acted as a child minder, or provides or provided day care, of the making of the order.
- (8) For the purposes of this section and section 35, “harm” has the same meaning as in the Children Act 1989 (c. 41) and the question of whether harm is significant is to be determined in accordance with section 31(10) of that Act.

#### **Textual Amendments**

- F3** Words in s. 34(1) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 208\(a\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F4** Words in s. 34(2) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 208\(b\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

#### **Commencement Information**

- I16** S. 34 in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))

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

- (1) Subsection (2) applies where—
  - (a) a person is registered under this Part, and

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- (b) the Welsh Ministers have reasonable cause to believe that unless they act under this section a child will suffer or is likely to suffer significant harm.
- (2) If this subsection applies, the Welsh Ministers may, by giving notice under this section to the person registered under this Part, provide for any decision of the Welsh Ministers that is mentioned in subsection (3) to take effect from the time when the notice is given.
- (3) Those decisions referred to in subsection (2) are decisions under section 29 to vary or remove a condition for the time being in force in relation to the registration or to impose an additional condition.
- (4) A notice under this section may be served on a person—
  - (a) by delivering it to the person, or
  - (b) by sending it by post to the person's last known address.
- (5) The notice must—
  - (a) state that it is given under this section,
  - (b) state the Welsh Ministers' reasons for believing that the circumstances fall within subsection (1)(b),
  - (c) specify the condition varied, removed or imposed, and explain the right of appeal conferred by section 37.

#### **Commencement Information**

**I17** S. 35 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

### *Procedural safeguards*

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

- (1) This section applies if the Welsh Ministers propose to take any of the following steps under this Part—
  - (a) refuse an application for registration;
  - (b) impose a new condition on a person's registration;
  - (c) vary or remove any condition imposed on a person's registration;
  - (d) refuse to grant an application for the variation or removal of any such condition;
  - (e) cancel a person's registration.
- (2) This section does not apply to action taken under section 34 or 35.
- (3) The Welsh Ministers must give to the applicant for registration or (as the case may be) the registered person, notice of their intention to take the step in question.
- (4) The notice must—
  - (a) give the Welsh Ministers' reasons for proposing to take the step, and
  - (b) inform the person concerned of that person's rights under this section.
- (5) The Welsh Ministers may not take the step until the end of the period of 28 days beginning with the day on which they give notice under subsection (3) unless the applicant for registration or (as the case may be) the registered person notifies the Welsh Ministers they wish to object to the step being taken.

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- (6) If the recipient of a notice under subsection (3) (“the recipient”) gives notice to the Welsh Ministers that the recipient wishes to object to the step being taken, the Welsh Ministers must give the recipient an opportunity to object before taking the step.
- (7) An objection made under subsection (5) may be made orally or in writing and in either case may be made by the recipient or the recipient's representative.
- (8) If the Welsh Ministers decide to take the step, they must give the recipient notice of their decision (whether or not the recipient informed the Welsh Ministers that the recipient wished to object to the step being taken).
- (9) The taking of a step mentioned in paragraph (b), (c) or (e) of subsection (1) does not have effect until—
  - (a) the expiry of the time within which an appeal may be brought under section 37, or
  - (b) if such an appeal is brought, the time when the appeal is determined (and the taking of the step is confirmed).
- (10) Subsection (9) does not prevent such a step having effect before the expiry of the time within which an appeal may be brought if the person concerned notifies the Welsh Ministers that the person does not intend to appeal.
- (11) If the Welsh Ministers give notice to an applicant for registration under this Part that they intend to refuse the application, the application may not be withdrawn without the consent of the Welsh Ministers.
- (12) In this section and in section 37, “a new condition” means a condition imposed otherwise than at the time of the person's registration.

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**Commencement Information**

**I18** S. 36 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

## 37 Appeals

- (1) An applicant for registration or (as the case may be) a registered person may appeal to the First-tier Tribunal against the taking of any of the following steps by the Welsh Ministers under this Part—
  - (a) refusal of an application for registration;
  - (b) imposition of a new condition on registration;
  - (c) variation or removal of any condition imposed on registration;
  - (d) refusal of an application to vary or remove any such condition;
  - (e) cancellation of registration.
- (2) The following persons may also appeal to the First-tier Tribunal—
  - (a) an applicant for registration or (as the case may be) a registered person in respect of a determination made by the Welsh Ministers under this Part of a prescribed description;
  - (b) a registered person against whom an order is made under section 34;
  - (c) a registered person who is given a notice under section 35.
- (3) On an appeal the First-tier Tribunal must either—

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- (a) confirm the taking of the step, the making of the other determination, the making of the order, or the giving of the notice (as the case may be), or
  - (b) direct that it does not have, or ceases to have, effect.
- (4) Unless the First-tier Tribunal has confirmed the taking of a step mentioned in subsection (1)(a) or (e) or the making of an order under section 34 cancelling a person's registration, the Tribunal may also do either or both of the following—
- (a) impose conditions on the registration of the person concerned;
  - (b) vary or remove any condition previously imposed on the person's registration.

**Modifications etc. (not altering text)**

**C5** [S. 37\(2\)\(a\)](#) applied (6.12.2022) by [The Child Minding and Day Care \(Disqualification\) \(Wales\) Regulations 2022 \(revoked\) 2022 \(S.I. 2022/1066\)](#), regs. 1, **10**

**Commencement Information**

**I19** [S. 37](#) in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))

*Disqualification from registration*

**38 Disqualification from registration**

- (1) In this section “registration” means registration under this Part.
- (2) Regulations may provide for a person to be disqualified from registration.
- (3) The regulations may, in particular, provide for a person to be disqualified from registration if—
  - (a) the person is barred from regulated activity relating to children (within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006 (c. 47));
  - (b) an order of a prescribed kind has been made with respect to the person;
  - (c) an order of a prescribed kind has been made at any time with respect to a child who has been in the person's care;
  - (d) a requirement of a prescribed kind has been imposed at any time with respect to such a child, under or by virtue of any enactment;
  - (e) the person has at any time been refused registration under this Part of this Measure, Part 3 of the Childcare Act 2006 (c. 21) or under Part 10 or Part 10A of the Children Act 1989 (c. 41) or any prescribed enactment, or had any such registration cancelled;
  - (f) the person has been convicted of an offence of a prescribed kind or has been discharged absolutely or conditionally for such an offence;
  - (g) the person has been given a caution in respect of an offence of a prescribed kind;
  - (h) the person has at any time been disqualified from fostering a child privately (within the meaning of the Children Act 1989 (c. 41));
  - (i) a prohibition has been imposed on the person at any time under section 69 of the Children Act 1989 (c. 41), section 10 of the Foster Children (Scotland) Act 1984 (c. 56) or any prescribed enactment;

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- (j) the person's rights and powers with respect to a child have at any time been vested in a prescribed authority under a prescribed enactment.
- (4) Regulations may provide for a person to be disqualified from registration if—
  - (a) the person lives in the same household as another person who is disqualified from registration, or
  - (b) the person lives in a household in which another person who is disqualified is employed.
- (5) Regulations under subsection (2) or (4) may provide for a person not to be disqualified from registration (and in particular may provide for a person not to be disqualified from registration for the purposes of section 39) by reason of any fact which would otherwise cause the person to be disqualified if—
  - (a) the person has disclosed the fact to the Welsh Ministers, and
  - (b) the Welsh Ministers have consented in writing to the person not being disqualified from registration and have not withdrawn their consent.
- (6) In this section—
  - “caution” includes a reprimand or warning within the meaning of section 65 of the Crime and Disorder Act 1998 (c. 37);
  - “enactment” means any enactment having effect at any time in any part of the United Kingdom.
- (7) A conviction in respect of which a probation order was made before 1 October 1992 (which would not otherwise be treated as a conviction) is to be treated as a conviction for the purposes of this section.

#### Commencement Information

**I20** S. 38 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

### 39 Consequences of disqualification

- (1) A person who is disqualified from registration under this Part by regulations under section 38 must not—
  - (a) act as a child minder in Wales,
  - (b) provide day care in Wales or be directly concerned in the management of any provision of day care in Wales.
- (2) A person must not employ, in connection with the provision of day care or child minding in Wales, a person who is disqualified from registration under this Part by regulations under section 38.
- (3) A person who contravenes subsection (1) or (2) commits an offence.
- (4) A person who contravenes subsection (1) is not guilty of an offence under subsection (3) if—
  - (a) the person is disqualified from registration by virtue only of regulations under section 38(4), and
  - (b) the person proves that he or she did not know, and had no reasonable grounds for believing, that he or she was living—

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- (i) in the same household as a person who was disqualified from registration, or
  - (ii) in a household in which such a person was employed.
- (5) A person who contravenes subsection (2) is not guilty of an offence under subsection (3) if the person proves that he or she did not know, and had no reasonable grounds for believing, that the person employed was disqualified from registration.
- (6) A person guilty of an offence under subsection (3) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both.
- (7) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44) (alteration of penalties for summary offences), the reference in subsection (7) to 51 weeks is to be read as a reference to 6 months.

#### Commencement Information

**I21** S. 39 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

### *Inspection*

#### 40 Inspection

- (1) The Welsh Ministers may by regulations make provision—
- (a) for the inspection of child minding provided in Wales by registered persons and of day care provided by registered persons on premises in Wales;
  - (b) for the publication of reports of the inspections in such manner as the Welsh Ministers consider appropriate.
- (2) The regulations may provide for the inspections to be organised by—
- (a) the Welsh Ministers, or
  - (b) Her Majesty's Chief Inspector of Education and Training in Wales, or any other person, under arrangements made with the Welsh Ministers.
- (3) The regulations may provide that for the purposes of the law of defamation any report published under the regulations is privileged unless the publication is shown to have been made with malice.
- (4) Regulations made under subsection (3) do not limit any privilege subsisting apart from provision in such regulations.

#### Commencement Information

**I22** S. 40 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

#### 41 Powers of entry

- (1) Any person authorised for the purposes of this subsection by the Welsh Ministers may at any reasonable time enter any premises in Wales on which child minding or day care is at any time provided.

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- (2) Any person authorised for the purposes of this subsection by the Welsh Ministers may at any reasonable time enter any premises in Wales if the person has reasonable cause to believe that a child is being looked after on any premises in contravention of this Part.
- (3) Authorisation under subsection (1) or (2)—
  - (a) may be given for a particular occasion or period;
  - (b) may be given subject to conditions.
- (4) A person exercising any power conferred by this section or section 42 must, if so required, produce some duly authenticated document showing that person's authority to do so.

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**Commencement Information**

**I23** S. 41 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

## **42 Powers of inspection**

- (1) A person entering premises under section 41 may (subject to any conditions imposed under section 41(3)(b))—
  - (a) inspect the premises;
  - (b) inspect, and take copies of—
    - (i) any records kept by the person providing the child minding or day care, and
    - (ii) any other documents containing information relating to its provision;
  - (c) seize and remove any document or other material or thing found there which the authorised person has reasonable grounds to believe may be evidence of a failure to comply with any condition or requirement imposed by or under this Part;
  - (d) take measurements and photographs or make recordings;
  - (e) inspect any children being looked after there, and the arrangements made for their welfare;
  - (f) interview in private the person providing the child minding or day care;
  - (g) interview in private any person looking after children, or living or working, on the premises who consents to be interviewed.
- (2) The power in subsection (1)(b) includes—
  - (a) power to require any person holding or accountable for documents or records kept on the premises to produce them, and
  - (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
- (3) The powers in paragraphs (b) and (c) of subsection (1) do not include power—
  - (a) to require a person to produce any record or document in respect of which a claim to legal professional privilege could be maintained in legal proceedings, or
  - (b) to take copies of such a record or document or to seize and remove it.



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- (4) In connection with inspecting any such documents, a person authorised for the purposes of section 41 (subject to any conditions imposed under section 41(3)(b))—
  - (a) may obtain access to, and inspect and check the operation of, any computer and associated apparatus or material which he or she considers is or has been in use in connection with the documents, and
  - (b) may require a person within subsection (5) to afford him or her such reasonable assistance as may be required for that purpose.
- (5) A person is within this subsection if he or she is—
  - (a) the person by whom or on whose behalf the computer is or has been used, or
  - (b) a person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material.
- (6) A person entering premises under section 41 (subject to any conditions imposed under section 41(3)(b)) may require any person to afford him or her such facilities and assistance with respect to matters within the person's control as are necessary to enable him or her to exercise powers under section 41 or this section.
- (7) Any person who without reasonable excuse—
  - (a) obstructs a person exercising any power under section 41 or this section, or
  - (b) fails to comply with any requirement imposed under this section,is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

**Commencement Information**

**I24** S. 42 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

**43 Power of constable to assist in exercising powers of entry**

- (1) A person authorised to exercise a power of entry under section 41 may apply to a court for a warrant under this section.
- (2) If it appears to the court that the authorised person—
  - (a) has attempted to exercise a power conferred on that person under section 41 or 42 but has been prevented from doing so, or
  - (b) is likely to be prevented from exercising any such power,the court may issue a warrant authorising any constable to assist the authorised person in exercising the power, using reasonable force if necessary.
- (3) A warrant issued under this section must be addressed to, and executed by, a constable.
- <sup>F5</sup>(4) .....
- (5) In this section, “court” means the High Court<sup>F6</sup>or the family court].

**Textual Amendments**

**F5** S. 43(4) omitted (22.4.2014) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 11 para. 209(a); S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)



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**F6** Words in s. 43(5) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 209\(b\)](#); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

#### Commencement Information

**I25** S. 43 in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))

### Information

#### 44 Supply of information to the Welsh Ministers

The Welsh Ministers may at any time require any person registered under this Part to provide them with any information connected with the person's activities as a child minder or in providing day care which the Welsh Ministers consider it necessary to have for the purposes of their functions under this Part.

#### Commencement Information

**I26** [S. 44](#) in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))

#### 45 Supply of information to local authorities

- (1) The Welsh Ministers must provide prescribed information to the relevant local authority, if they take any of the following steps under this Part—
  - (a) grant a person's application for registration;
  - (b) give notice of their intention to cancel a person's registration;
  - (c) cancel a person's registration;
  - (d) suspend a person's registration;
  - (e) remove a person from the register at that person's request.
- (2) The Welsh Ministers must also provide prescribed information to the relevant local authority if an order is made under section 34(2).
- (3) The information which may be prescribed for the purposes of this section is information which would assist the local authority in the discharge of its functions under section 27 of the Childcare Act 2006 (c. 21).
- (4) In this section, “the relevant local authority” means the local authority for the area in which the person acts as a child minder (or has so acted) or provides (or has provided) day care in respect of which the person is (or was) registered.
- (5) The Welsh Ministers may provide information to a person exercising statutory functions (for purposes connected to those functions) about whether or not a person is registered under this Part.

#### Commencement Information

**I27** S. 45 in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))

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### *Offences, criminal proceedings and fixed penalties*

#### **46 Offence of making false or misleading statement**

- (1) A person commits an offence if, in an application for registration under this Part, that person knowingly makes a statement which is false or misleading in a material particular.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

##### **Commencement Information**

**I28** S. 46 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

#### **47 Penalty notices**

- (1) Where the Welsh Ministers are satisfied that a person has committed a fixed penalty offence, they may give the person a penalty notice in respect of the offence.
- (2) A fixed penalty offence is any relevant offence which is prescribed for the purposes of this section.
- (3) A relevant offence is an offence under this Part or under regulations made under this Part.
- (4) A penalty notice is a notice offering the person the opportunity of discharging any liability to conviction for the offence to which the notice relates by payment of a penalty in accordance with the notice.
- (5) Where a person is given a penalty notice, proceedings for the offence to which the notice relates may not be instituted before the end of such period as may be prescribed.
- (6) Where a person is given a penalty notice, the person cannot be convicted of the offence to which the notice relates if the person pays the penalty in accordance with the notice.
- (7) Penalties under this section are payable to the Welsh Ministers.

##### **Commencement Information**

**I29** S. 47 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

#### **48 Penalty notices: supplementary provisions**

- (1) The Welsh Ministers may by regulations make provision about any of the following—
  - (a) the form and content of penalty notices;
  - (b) the monetary amount of the penalty and the time by which it is to be paid;
  - (c) determination of the methods by which penalties may be paid;
  - (d) the records to be kept in relation to penalty notices;
  - (e) the withdrawal, in prescribed circumstances, of a penalty notice, including—
    - (i) repayment of any amount paid by way of penalty under a penalty notice which is withdrawn, and

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- (ii) prohibition of the institution or continuation of proceedings for the offence to which the withdrawn notice relates;
  - (f) certificates to be received in evidence—
    - (i) purporting to be signed by or on behalf of a prescribed person, and
    - (ii) stating that payment of any amount paid by way of penalty was or, as the case may be, was not received on or before a date specified in the certificate;
  - (g) action to be taken if a penalty is not paid in accordance with a penalty notice;
  - (h) anything else in relation to penalties or penalty notices as the Welsh Ministers think necessary or expedient.
- (2) Regulations under subsection (1)(b)—
- (a) may make provision for penalties of different amounts to be payable in different cases, including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid, but
  - (b) must secure that the amount of any penalty payable in respect of any offence does not exceed one half of the maximum amount of the fine to which a person committing the offence would be liable on summary conviction<sup>F7</sup> or, where there is no such maximum amount, that it does not exceed the amount corresponding to level 4 on the standard scale for summary offences].
- (3) In this section—
- “penalty” means a penalty under a penalty notice;
  - “penalty notice” has the meaning given by section 47.

#### Textual Amendments

- F7** Words in s. 48(2)(b) inserted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 5 para. 16](#) (with reg. 5(1))

#### Commencement Information

- I30** S. 48 in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))

## 49 Time limit for proceedings

- (1) Proceedings for an offence under this Part or regulations made under it may be brought within a period of one year from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings comes to the prosecutor's knowledge.
- (2) No such proceedings may be brought by virtue of subsection (1) more than three years after the commission of the offence.

#### Commencement Information

- I31** [S. 49](#) in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))

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## 50 Offences by bodies corporate

- (1) This section applies where any offence under this Part is committed by a body corporate.
- (2) If the offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of, any director, manager or other similar officer of the body corporate, or of any person who was purporting to act in any such capacity, he or she (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

### Commencement Information

**I32** [S. 50](#) in force at 1.4.2011 by [S.I. 2010/2582](#), [art. 2](#), [Sch. 1](#) (with [Schs. 2, 3](#))

## 51 Unincorporated associations

- (1) Proceedings for an offence under this Part which is alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in the name of any of its members).
- (2) For the purpose of any such proceedings, rules of court relating to the service of documents are to have effect as if the association were a body corporate.
- (3) In proceedings for an offence under this Part brought against an unincorporated association, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) apply as they do in relation to a body corporate.
- (4) A fine imposed on an unincorporated association on its conviction of an offence under this Part is to be paid out of the funds of the association.
- (5) If an offence under this Part by an unincorporated association is shown—
  - (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
  - (b) to be attributable to any neglect on the part of such an officer or member,
 the officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

### Commencement Information

**I33** [S. 51](#) in force at 1.4.2011 by [S.I. 2010/2582](#), [art. 2](#), [Sch. 1](#) (with [Schs. 2, 3](#))

## *Miscellaneous*

## 52 Functions of local authorities

Regulations may require a local authority to secure the provision—

- (a) of information or advice about child minding and day care;
- (b) of training about the provision of child minding and day care.

*Changes to legislation: There are currently no known outstanding effects for the Children and Families (Wales) Measure 2010, PART 2. (See end of Document for details)*

#### Commencement Information

**I34** S. 52 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

### 53 Fees

- (1) Regulations may require persons registered under this Part to pay to the Welsh Ministers at or by prescribed times fees of the prescribed amounts in respect of the discharge by the Welsh Ministers of their functions under this Part.
- (2) Regulations under subsection (1) may prescribe circumstances in which—
  - (a) the amount of a fee payable under the regulations may be varied in accordance with the regulations;
  - (b) a fee payable under the regulations may be waived.

#### Commencement Information

**I35** S. 53 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

### 54 Co-operation between authorities

- (1) If it appears to the Welsh Ministers that any local authority could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of the authority, specifying the action in question.
- (2) An authority whose help is requested 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.

#### Commencement Information

**I36** S. 54 in force at 1.4.2011 by S.I. 2010/2582, art. 2, Sch. 1 (with Schs. 2, 3)

### 55 Notices

- (1) This section applies in relation to notices required or authorised to be given to any person by any of the following—
  - (a) section 33;
  - (b) section 36.
- (2) The notice may be given to the person in question—
  - (a) by delivering it to the person,
  - (b) by sending it by post to the person's last known address, or
  - (c) subject to subsection (3), by transmitting it electronically.
- (3) If the notice is transmitted electronically, it is to be treated as given only if the requirements of subsection (4) or (5) are met.
- (4) If the person required or authorised to give the notice is the Welsh Ministers—

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- (a) the person to whom the notice is required or authorised to be given must have indicated to the Welsh Ministers that person's willingness to receive notices transmitted by electronic means and provided an address suitable for that purpose, and
  - (b) the notice must be sent to the address provided by that person.
- (5) If the person required or authorised to give the notice is not the Welsh Ministers, the notice must be transmitted in such manner as the Welsh Ministers may require.
- (6) An indication of willingness to receive notices transmitted by electronic means, given for the purposes of subsection (4), may be given generally for the purposes of notices required or authorised to be given by the Welsh Ministers under this Part or may be limited to notices of a particular description.
- (7) In relation to the taking of a step mentioned in paragraph (b) or (c) of section 36(1), notification authorised to be given to the Welsh Ministers under subsection (5) or (7) of that section may be given orally to a person authorised by the Welsh Ministers to receive such notification (as well as by any of the methods mentioned in subsection (2)).

#### **Commencement Information**

**I37** [S. 55](#) in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))

## **56 Death of registered person**

- (1) Regulations may—
- (a) provide for the provisions of this Part to apply with prescribed modifications in cases where a person who was the only person registered in respect of a day care business has died;
  - (b) require the personal representatives of a deceased person who was registered in respect of child minding or day care to notify the Welsh Ministers of the death.
- (2) Regulations under subsection (1)(a) may in particular—
- (a) provide for the day care business to be carried on for a prescribed period by a person who is not registered in respect of it; and
  - (b) include provision for the prescribed period to be extended by such further period as the Welsh Ministers may allow.

#### **Commencement Information**

**I38** [S. 56](#) in force at 1.4.2011 by [S.I. 2010/2582](#), art. 2, [Sch. 1](#) (with [Schs. 2, 3](#))

**Changes to legislation:**

There are currently no known outstanding effects for the Children and Families (Wales) Measure 2010, PART 2.