

CARE STANDARDS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part Vi – Child Minding and Day Care for Young Children

186. **Part VI** inserts a new Part (Part XA) into the Children Act 1989 which provides for child minding and day care for young children in England and Wales. Part X of the Children Act continues to apply to Scotland. In England the responsibility for child minding and day care regulation is transferred from local authorities to Her Majesty’s Chief Inspector of Schools for England (HMCIS). The functions will be brought together with those in respect of the inspection of nursery education under a new Early Years Directorate within Ofsted.
187. In addition, the new Part XA makes changes to the present system of child minding and day care regulation. For example, it gives the Secretary of State powers to make regulations governing the activities of registered providers (such as in respect of qualifications and training or the safety of premises) and introduces a requirement to publish inspection reports. In Wales the responsibility for child minding and day care regulation will pass to the registration authority established as part of the National Assembly for Wales. Her Majesty’s Chief Inspector of Education and Training in Wales, working through Estyn (the Welsh equivalent of Ofsted), will continue to inspect early years education under existing powers.
188. In addition, the new Part XA provides for checks on the suitability of persons working with older children.

Section 79 Amendment of the Children Act 1989

189. **Section 79(1)** inserts a new Part XA into the Children Act 1989. It will apply to England and Wales, whilst the existing Part X will continue to apply to Scotland. The notes below refer to the new sections 79A to 79W to be inserted into the Children Act by section 79. Throughout the notes on this Part, the term ‘registration authority’ means HMCIS in relation to England, and the National Assembly in relation to Wales.

Introductory

Section 79A Child minders and day care providers

190. This section defines the child care providers covered by Part XA. A child minder is defined as a person who is paid (by any form of payment, including payment in kind) to look after a child or children under the age of eight on domestic premises. However, nannies who come into the parents’ home are excluded from this definition, except where they look after the children of more than two families. Day care is defined as that provided for children aged under eight in places other than domestic premises. For example, care provided in nurseries, crèches, playgroups *etc.* This section also expands on the definition used in Part X of the Children Act to clarify that “day care” covers care provided at any time of the day or night.

191. In addition, this section applies Part XA only to those providing day care or child minding for more than two hours a day. However, a child minder who works only between 6 pm and 2 am is not required to register under Part XA. This is to prevent certain informal babysitting arrangements from being caught by Part XA.

Section 79B Other definitions, etc.

192. This section establishes HMCIS (i.e. Ofsted) and the National Assembly as the registration authorities responsible for the regulation of day care and childminding in England and Wales respectively. It sets out the criteria which must be met in order for a person to be qualified to be registered as a child minder or day care provider. The conditions include a requirement for providers and others who may be on the premises (for example, employees or other residents) to be suitable to be with the children. In addition, this section defines “care”, “domestic premises” and identifies the “Tribunal” as that established by the Protection of Children Act 1999.

Regulations

Section 79C Regulations etc. governing child minders and day care providers

193. This section gives the Secretary of State and the National Assembly for Wales powers to make regulations governing registered child minders and day care providers. The Secretary of State has to consult HMCIS and anyone else he considers appropriate before regulations are made. The regulations may cover how providers deliver their services or how HMCIS fulfils his regulatory function. Regulations in Wales will be developed by the Assembly in full consultation with all interested parties, bodies and authorities. A registered child minder or day care provider may be guilty of an offence if they fail, without reasonable excuse, to comply with any regulation requirements. The offence carries a fine of up to level 5 on the standard scale .

Registration

Section 79D Requirement to register

194. This section requires child minders and day care providers to register with HMCIS in order to operate in England, or with the National Assembly in order to operate in Wales. It also empowers, but does not require, the registration authorities to serve an enforcement notice on an unregistered childminder. It is offence to act, without reasonable excuse, as an unregistered childminder whilst the notice is in effect. It is also an offence to act as an unregistered day care provider. Offences under this section will carry a fine of up to level 5 on the standard scale.

Section 79E Applications for registration

195. This section provides for the application procedure to be followed by a person wishing to act as a child minder or day care provider. The provision of day care on different premises requires separate applications in respect of each premises.

Section 79F Grant or refusal of registration

196. This section sets the criteria, including payment of a prescribed fee, to be met in order for the registration authority to register a person as a child minder or day care provider. If a registered child minder or day care provider fails to comply with any of the conditions of registration, they may be liable for a fine of up to level 5 on the standard scale. The authority must also make any register of child minders and day care providers available to the public.

Section 79G Cancellation of registration

197. This section enables the registration authority to cancel registration if it considers the child minder or day care provider has ceased or will cease to be eligible or if the annual fee has not been paid. Any cancellation must be in writing.

Section 79H Suspension of registration

1 See paragraph 97 of these notes for definition of standard scale.

198. This section enables regulations to be made which would give the registration authority a power to suspend registration. It is envisaged the power will be exercised when children are considered to be at risk in circumstances which may lead to cancellation of registration. Any regulations made will allow providers a right of appeal to the Tribunal against suspension.

Section 79J Resignation of registration

199. This section makes new provision for child minders and day care providers to voluntarily give up their registration. This will be helpful, for example, in ensuring that information for parents seeking child care provision relates only to active providers. However, resignation of registration is not permitted in circumstances where cancellation of registration is a possibility.

Section 79K Protection of children in an emergency

200. This section provides that the registration authority can apply to the Magistrates' court for an emergency order in respect of a registered childminder or day care provider where the registration authority believes that a child in their care is suffering, or is likely to suffer, significant harm. The order may cancel the person's registration, vary or remove a condition of registration, or impose a new condition of registration with immediate effect.

Section 79L Notice of intention to take steps

201. This section sets out the procedure for notification of decisions by the registration authority. It gives the applicant or registered person a right to make representations about a proposal to take action to which he objects.

Section 79M Appeals

202. This section enables an appeal to the Tribunal to be made against any decision of the registration authority made under section 79L or an order made under section 79K. The Tribunal may allow or refuse an appeal and may impose, vary or cancel any condition of registration.

Inspection: England

Section 79N General functions of the Chief Inspector

203. This section imposes duties on HMCIS to provide the Secretary of State with information and advice on registered child minding and day care. He must report on his Part XA functions and on related matters.

Section 70P Early years child care inspectorate

204. This section requires HMCIS to set up and maintain a register of early years child care inspectors ("registered inspectors"). The register may be combined with Ofsted's existing register of nursery education inspectors to form a single register of all early years inspectors.

Section 79Q Inspection of provision of child minding and day care in England

205. This section provides that child minding and day care inspections are to be carried out by registered early years child care inspectors. Inspections are to be carried out at intervals set out in regulations. HMCIS may either organise inspections or arrange with others for them to organise inspections (for example, by contracting out the work). The registered inspector is required to report on the inspections carried out under this section.

Section 79R Reports of inspections

206. This section requires registered inspectors to produce written reports on inspections they carry out for HMCIS within a prescribed time limit. Reports are sent to the Secretary of State and may also be made available to other prescribed people. HMCIS has a power to edit reports where appropriate (for example, to preserve confidentiality).

Inspection: Wales

207. In general no provision is made for the Assembly to prescribe the detailed arrangements for inspection on the face of the Act. As consistent with other parts of the Act a power to enable inspections to be undertaken is sufficient for Wales. Detailed matters of inspection such as this will be dealt with through existing powers of the National Assembly. Under the Act, Estyn (the Welsh equivalent of Ofsted) will be able to become involved in inspections of premises subject to the provisions of Part VI.

Section 79S General functions of the Assembly

208. *Subsection (1)* provides for the Assembly to provide training to assist day care providers and childminders. *Subsection (2)* provides a parallel power to that in section 79N (5) so that the Assembly may, by regulation, confer additional functions on itself, but only where that function has already been conferred on HMCIS by the Secretary of State.

Section 79T Inspection: Wales

209. *Subsection (1)* provides a parallel power to that in section 79N (2) so that the Assembly can require a registered person in Wales to provide any information the Assembly considers necessary to carry out its functions. *Subsection (2)* provides regulation-making powers in respect of inspecting the quality and standards of day care and childminding and in publishing reports of inspections. *Subsection (3)* enables the Assembly to organise inspections or make arrangements with Estyn or others to organise the inspections.
210. The National Assembly will employ inspectors directly and will not need to create a register of inspectors for any of its responsibilities under this Part .

Supplementary

Section 79U Rights of entry etc. in England

211. This section gives registered inspectors powers of entry to any premises on which child minding or day care is provided. Entry may be gained for general inspection purposes or where an inspector reasonably believes a child may be at risk. It is an offence carrying a fine of up to level 4 on the standard scale to obstruct an inspector exercising his powers under this section.

Section 79V Function of local authorities

212. This section provides that, in accordance with regulations, local authorities will provide information, training and advice on child minding and day care provision.

Checks on suitability of persons working with children over the age of seven

Section 79W Requirement for certificate of suitability

213. This section enables regulations to be made to place duties, if certain conditions are met, on those who provide care for children aged eight and over for more than five hours a week, and who would otherwise not have to register under Part XA. Providers are required to hold a valid certificate for themselves and others on the premises (for example, employees or other residents) which demonstrates to parents that they are suitable to look after children. The regulations under this section may create certain offences in connection with the certificate. These will carry a fine of up to level 5 on the standard scale.
214. *Section 79(2)* gives effect to *Schedule 3*, which inserts a new Schedule 9A into the Children Act 1989 (see below). Section 79 (3) and (4) enable an order to be made setting out the scheme to transfer staff currently working for local authorities to the regulatory authority. Section 79(5) disapplies Part X of the Children Act in England and Wales. It will continue to apply in Scotland.