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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This is the second commencement order made by the Welsh Ministers under the Children and Families (Wales) Measure 2010 (“the Measure”).

This Order commences the provisions within Part 2 of the Measure, which relate to child minding and the provision of day care for children under the age of eight. It is intended that these provisions will be used to replace the provisions within Part XA of and Schedule 9A to the Children Act 1989 (*child minding and day care for young children in Wales*) (“the 1989 Act”), which currently govern the arrangements for the provision and regulation of such care provided in Wales and which are repealed by this Order.

Subject to the savings provisions contained in articles 3 and 4, article 2 and Schedule 1 bring into force on 1 April 2011 Part 2 of the Measure, more particularly:

- section 19 of the Measure, which sets out the definition of “child minding” and “day care for children”;
- section 20 of the Measure, which requires the Welsh Ministers to maintain a register of persons who are registered as child minders;
- section 21 of the Measure, which provides that a person may not act as a child minder unless that person is registered as a child minder under Part 2 of the Measure;
- section 22 of the Measure, which requires the Welsh Ministers to maintain a register of persons who are registered to provide day care for children;
- section 23 of the Measure, which provides that a person may not provide day care for children on any premises in Wales unless that person is registered as a provider of day care for children under Part 2 of the Measure;
- sections 24 to 30 of the Measure, which make provision for the requirement to and process for registration as a child minder or provider of day care for children under Part 2 of the Measure;
- sections 31 to 33 of the Measure, which make provision for the cancellation of registration (section 31), suspension of registration (section 32) and for the voluntary removal from the register (section 33) of a child minder or a provider of day care for children;
- sections 34 and 35 of the Measure, which make provision for the protection of children in an emergency. Section 34 makes provision for the cancellation of a person’s registration as a child minder or provider of day care for children and section 35 for changes to conditions to be imposed upon a person’s registration as a child minder or a provider of day care for children;
- section 36 of the Measure which lays down procedural safeguards for the taking of certain steps under Part 2 of the Measure;
- section 37, which makes provision for appeals to be made to the First-tier Tribunal against the taking of specified steps and in respect of specified decisions;
- sections 38 and 39, which make provision for a person’s disqualification from registration (section 38) and the consequences of such disqualification (section 39);
- sections 40 to 43, which make provision for a power of inspection and entry in respect of services provided in accordance with Part 2 of the Measure;
- sections 44 and 45, which relate to the supply of information to the Welsh Ministers (section 44) and to local authorities (section 45);

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- sections 46 to 51, which make provision for offences, criminal proceedings and fixed penalties;
- sections 52 to 56 of the Measure, which make provision for the functions of local authorities (section 52), fees (section 53), co-operation between authorities (section 54), notices (section 55) and death of the registered person (section 56).

Article 3 of the Order saves the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010 notwithstanding the repeal of the provisions of the 1989 Act under which they have been made.

Article 4 of and Schedules 2 and 3 to the Order make saving and transitional provision as a consequence of the coming into force of Part 2 of the Measure and the repeal of Part XA of and Schedule 9A to the 1989 Act. In particular, in Schedule 2, provision is made to ensure that legal proceedings under or in relation to Part XA of and Schedule 9A to the 1989 Act are unaffected.

Schedule 3 contains savings and transitional provision. In particular—

- Paragraph 2 provides that persons who are registered as child minders or providers of day care under Part XA of and Schedule 9A to the 1989 Act immediately before 1 April 2011 will, subject to exceptions, be treated on and after that date (“the relevant date”) as if they were registered in accordance with the provisions of the new regime under Part 2 of the Measure. It also makes appropriate provision about conditions attaching to this “transferred” registration.
- Paragraph 3 makes provision about certificates of registration where a person’s registration is deemed to be transferred under the new regime set out in Part 2 of the Measure. Provision is also made for the issue of a certificate of registration under Part 2 of the Measure in prescribed circumstances.
- Paragraph 4 makes provision for persons who were not eligible for registration as child minders or providers of day care before the relevant date. In particular, it disapplies, in prescribed circumstances, the application of provisions in Part 2 of the Measure which make it an offence to act as a child minder or provider of day care for children without being registered.
- Paragraph 5 makes provision for applications made under Part XA of and Schedule 9A to the 1989 Act that have not been determined on 1 April 2011 to be treated as having been made under Part 2 of the Measure and determined by the Welsh Ministers under those provisions.
- Paragraphs 6 and 7 make provision for notices of intention issued in the prescribed circumstances under Part XA of the 1989 Act (to refuse an application for registration, or to cancel an existing registration, to impose a condition upon a person’s registration or to refuse to remove or vary any condition already imposed on a person’s registration) to be treated as though the notices were issued in accordance with section 36 of the Measure.
- Paragraphs 8, 9 and 10 make provision in respect of appeals made to the First-tier Tribunal in accordance with section 79M of 1989 Act, which have been made before the relevant date and which have not been determined, to be treated as an appeal under section 37 of the Measure and determined in accordance with that provision.
- Paragraph 11 provides that an enforcement notice served by the Welsh Ministers in accordance with section 79D of the 1989 Act which continues to have effect immediately before the relevant date will continue to have effect on and from that date as though it were served under section 21(3) of the Measure.
- Paragraph 12 makes provision for a compliance notice issued by the Welsh Ministers to a person in accordance with the Child Minding and Day Care (Wales) Regulations 2002 before the relevant date to continue to have effect on and after that date as though it were issued in accordance with regulation 18 of the Child Minding and Day Care (Wales) Regulations 2010.
- Paragraph 13 allows the Welsh Ministers to have regard, when exercising their functions under Part 2 of the Measure, to a person’s compliance or failure to comply with the duty imposed by regulation 23 of the Child Minding and Day Care (Wales) Regulations 2002 (*national minimum standards*).

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- Paragraph 14 provides that where immediately before the relevant date, a person's registration is suspended by the Welsh Ministers in accordance the Suspension of Day Care Providers and Child Minders (Wales) Regulations 2004, the suspension is to be treated on and after that date as if it were made under the Child Minding and Day Care (Wales) Regulations 2010 ("the 2010 Regulations"). Appeals against a suspension made before the relevant date and which have not been determined by the First-tier Tribunal will be treated on and after that date as having been made under regulation 45 of the 2010 Regulations.
- Paragraph 15 make provision for any consents given (under the Disqualification Regulations 2010) to waive a disqualification, which have not been withdrawn, to continue to have effect under those Regulations, which are saved by article 3 until such time as regulations are made under section 38 of the Measure (*disqualification from registration*).
- Paragraph 16 provides that where the Welsh Ministers have made an application to a justice of the peace for an order under section 79K(1)(a)(i) of the 1989 Act cancelling a person's registration and immediately before the relevant date that order has not been made, that application will on and after that date be treated as having been made under section 34 of the Measure (*protection of children in an emergency: cancellation of registration*).
- It also makes provision for when the order applied for seeks to vary or remove a condition, or to impose a new condition, upon a person's registration (in accordance with section 79K(1)(a)(ii) or (iii) respectively), and immediately before the relevant date that order has not been made, the Welsh Ministers will withdraw that application and take action in accordance with section 35 of the Measure (*protection of children in an emergency: changes to conditions*).