

REGULATORY APPRAISAL – The Suspension of Day Care Providers and Child Minders (Wales) Regulations 2004

Purpose and intended effect

1. The Suspension of Day Care Providers and Child Minders (Wales) Regulations 2004 will put into place procedures for the suspension of day care providers or childminders in prescribed circumstances, in particular where there is a risk of harm that may be posed to children who are or who may be cared for.
2. The regulations also propose that a person will be given a right of appeal to the Protection of Children and Vulnerable Adults and Care Standards Tribunal (Care Standards Tribunal) against a decision to suspend that person's registration, or against a refusal to lift that suspension.
3. The proposals in relation to a suspension of registration are considered necessary to help protect children.

Background

4. Since the introduction of regulation under the Children Act 1989, the risk of children being harmed whilst in the care of childminders and in day care settings has been reduced. Local authorities were required to determine that those seeking registration to provide care were suitable to do so and continued to be suitable.
5. Part XA of the Children Act 1989 was introduced by the Care Standards Act 2000 on 1 April 2002 and transferred the responsibility for childcare registration, inspection and monitoring from local authorities to the Care Standards Inspectorate for Wales (CSIW).
6. The present position is that the only option open to CSIW is to consider cancellation of the registration of a day care provider or childminder (the registered person/s) where there is evidence that the person is no longer qualified to provide such care.
7. Cancellation of registration is a permanent step and consequently the burden of evidence is high. One of the consequences of cancellation of registration is that a person is then automatically disqualified from registering as a childcare provider in the future. Suspension is a less draconian step to take and does not have the same impact on the ability of persons to provide day care in the future.
8. Section 79H within Part XA of the Children Act 1989, as amended by the Care Standards Act 2000, makes provision allowing the Assembly to suspend the registration of a child minder or day care provider.
9. Assembly officials have met quarterly with representatives of the childminding and day care provider voluntary sector since April 2003 to

review aspects of the regulatory functions undertaken by CSIW. The meetings recommended that the Assembly should make the regulations that will prescribe the circumstances in which CSIW may apply a suspension, and the periods of such suspension, allowing for a right of appeal against suspension.

Risk assessment

10. The CSIW does not have the power to cancel the registration of day care providers and childminders without substantial evidence.
11. This leaves CSIW in an unsatisfactory position where there may be reasonable cause to believe that there may be a risk of harm to children while they are in the charge of day care or childminding settings. Because there may be no tangible or readily available evidence to justify outright cancellation of the registration, the provider may continue in the meantime to care for children.
12. The regulations will clarify the grounds on which the Care Standards Inspectorate for Wales (CSIW) can apply to suspend the registration for a limited period of six weeks, in order for full investigations to be carried out, or to allow steps to be taken to reduce or eliminate the risk of harm. The effect of the suspension will be to immediately prevent the registered person from operating as a day care provider or childminder. The suspended day care provider or childminder will cease to “trade” during the prescribed time in which CSIW will fully investigate the case for suspension.
13. These measures will thus strengthen and make the CSIW decision-making process more robust and faster; and provide greater protection to children.

Options

14. *Option 1 – To maintain the status quo and not make these regulations, the result would be:*
 - CSIW would have to continue to work with what is considered to be an unsatisfactory basis for determining the risk of harm to children.
15. *Option 2– To make these regulations in order to:*
 - Provide CSIW with the option of suspension, rather than outright cancellation of registration; and
 - Provide for appeal to the Care Standards Tribunal, against a decision by CSIW to suspend the registration, or refusal to lift the suspension.

Benefits

16. The aim of the new suspension regulations is to provide greater protection for children by ensuring that when there is concern that children are at risk of harm, a suspension can be applied as a short-term measure.
17. The regulations will clarify the grounds on which the CSIW can apply to suspend the registration for a limited period in order for a full investigation to be carried out, and/or in which to allow steps to be taken to reduce or eliminate the risk of harm.
18. The ability to be able to suspend registration, rather than outright cancellation of registration, serves to protect the livelihood of the day care provider or childminder, especially should the cause of risk issues prompting the suspension action prove resolvable or unfounded.
19. Further benefits for making the suspension regulations include:
 - Allowing the Care Standards Inspectorate Wales (CSIW) the right to suspend the person's registration at the first sign of concern rather than having to amass sufficient evidence to justify a cancellation of registration.
 - A person will be given a right of appeal to the Care Standards Tribunal against a decision by CSIW to suspend a registration or against their decision not to lift the suspension provision.

Costs

20. *Option 1 - To maintain the status quo and not make these regulations* – There are no readily identifiable additional financial implications for the Welsh Assembly Government. However, as previously stated this would leave CSIW in an unsatisfactory position where there may be reasonable cause to believe that there may be a risk of harm to children while they are in the charge of a day care or childminding setting. The CSIW have to substantiate a decision to take the permanent step of cancellation of registration and the burden of evidence is high. Also, there are non-identifiable costs in terms of possible lost income to "suitable" childcare providers whose registration may have been cancelled in erroneous circumstances, and who are thus prevented from carrying out their business because of the identified deficiencies in the current arrangements.
21. *Option 2 - To make these regulations* – In the vast majority of cases registered day care providers and childminders would not be suspended under the proposed new regulations.
22. Applicants who wish to register as full day care providers are charged £125. Those applying to be other types of daycare provider or to be childminders are not charged a registration fee. These regulations will not cause any variation to these arrangements.

23. The new regulations will provide CSIW with the power of suspension of registered persons in certain circumstances. CSIW has no way of knowing how many suspensions that they might have to consider. For those few registered persons that are suspended the following scenarios could apply.
24. *Scenario 1* – If a registration is suspended under the proposed new regulations, and the registered person does not seek to lift the suspension through the appeals procedure to the Care Standards Tribunal, there will be:
- a. no further cost to the applicant (whether or not a registration fee would have applied), and
 - b. no additional costs for CSIW.
25. *Scenario 2* - If a registration is suspended under the proposed new regulations, and the registered person makes a written request to the CSIW to lift the suspension, there will be:
- a. no further cost to the applicant (whether or not a registration fee would have applied), but
 - b. additional costs for CSIW arising from the administration work involved in considering the case for lifting the suspension will be borne from the CSIW's existing running costs budgets within the Assembly's Central Administration MEG.
26. *Scenario 3* – If a registration is suspended under the proposed new regulations, the registered person may appeal to the Care Standards Tribunal, against the:
- a. CSIW decision to suspend the registration.
 - b. CSIW refusal to lift the suspension.

There is no fee payable for making an appeal to the Care Standards Tribunal.

In this scenario, there may be:

- a. costs to the applicant in preparing their case for appeal, and
- b. costs to CSIW in preparing their defence case for suspending the registration and/or refusing to lift the suspension will be borne from the CSIW's existing running costs budgets within the Assembly's Central Administration MEG.

The circumstances of particular cases will differ and the costs for each party are not readily identifiable. However, given that cancellations by CSIW of registrations are already low there are not expected to be significant additional costs for either the applicant or CSIW associated with these suspension regulations.

27. Overall the impact of the regulations is believed to be broadly neutral in terms of regulatory costs to the Assembly.

28. Discussions with representatives of the childcare provider organisations (as detailed in the Annex to this document) whose membership covers the majority of providers in the sector have not identified any specific additional costs, or any significant financial impact that would be incurred as a result of these proposals.

Consultation

With Stakeholders

29. These regulations were not the subject of a full public consultation. However, they have been subject to of much discussion and focused consultation since April 2003, through the ongoing quarterly meetings between my officials and the national childminding and day care provider representative organisations (as detailed in the Annex attached). The recommendation of the meetings was that the Assembly should make regulations that will prescribe the circumstances in which CSIW may apply a suspension, and of the period of such a suspension, allowing for a right of appeal against suspension. On 7 June 2004, drafts of the regulations were passed, by e-mail, to these organisations for comment by 6 August 2004. One response was received and that was in agreement with the content of the Regulations.

With Subject Committee

30. This Instrument was formally scrutinised by the Health and Social Services Committee on 6 October 2004. Members queried what consideration and provision has been made towards sharing information concerning individuals under suspension amongst appropriate care bodies in Wales, England, Scotland and Northern Ireland. The Minister said that arrangements would be made for the regulatory bodies to share information and to fast track requests for registration. She also confirmed that this would also provide a safe guard in event of a worker who was on a short-term suspension seeking employment elsewhere in the UK. The committee recommended approval of the Instrument without amendment.

Significant Costs

31. There will be no significant costs arising from the proposed regulations.

Review

32. Assembly Policy officials will evaluate the effectiveness of these regulations within the first 24 months of operation by undertaking a review with the CSIW and the childcare provider representative bodies to establish whether they have improved the decision making process. Following this evaluation we will consider further revision of the regulations if the need for changes is identified.

Summary

33. The Care Standards Act 2000 amended the Children Act 1989 to provide for the registration of any person providing day care or acting as a child minder to be suspended for a prescribed period by the CSIW in prescribed circumstances. A provision conferring on the person concerned a right of appeal to the Care Standards Tribunal was also included.
34. This amendment provides an alternative to the permanent step of cancelling the registration of any day care provider or childminder that the CSIW is of the opinion is no longer qualified, or will cease to be qualified, to provide childcare.
35. The proposals in relation to a suspension of registration are considered urgent to protect children.
36. It is therefore recommended that agreement in principle is given to these regulations being introduced for the reasons outlined above.

ANNEX

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