

Explanatory Memorandum - Suspension of Day Care Providers and Child Minders (Wales) (Amendment) Regulations 2008.

This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

(i) **Description** - This Statutory Instrument amends the Suspension of Day Care Providers and Child Minders (Wales) Regulations 2004 by substituting for existing references to the Tribunal established under section 9 of the Protection of Children Act 1999 (“the Tribunal”) references to the First- tier Tribunal to be established under the Tribunals, Courts and Enforcement Act 2007. It also removes the provisions of the 2004 Regulations dealing with the award of a costs order under the Tribunal Regulations, which governed the Tribunal. The issue of costs in the case of appeals to the First- tier Tribunal under the 2004 Regulations will be covered by the Tribunal Procedure Rules which shall govern the First-tier tribunal and shall be made under the 2007 Act.

(ii) **Matters of special interest to the Subordinate Legislation Committee** – None.

(iii) **Legislative Background** – The Suspension of Day Care Providers and Child Minders (Wales) Regulations 2004 were made under sections 79H (1) and (2) and 104 (4) of the Children Act 1989. In accordance with section 14 of the Interpretation Act 1978 these powers are also being used to make the necessary amendments to the 2004 Regulations.

(iv) **Purpose and intended effect of the legislation** – The 2004 Regulations set out the circumstances in which a person registered as a child minder or provider of day care may have their registration suspended and allows for a right of appeal against suspension.

Under the 2004 Regulations appeals were made to the Tribunal established by section 9 of the Protection of Children Act 1999 (“the Tribunal”). The appeal provisions are set out in regulation 8 of the 2004 Regulations.

Pursuant to the Tribunals, Courts and Enforcement Act 2007 the existing functions of the Tribunal have been transferred to the First-tier Tribunal, which shall be governed by new Tribunal Procedures Rules made pursuant to section 22 of the 2007 Act.

These regulations amend the 2004 Regulations to take account of these changes. They provide that any reference to the Tribunal in the 2004 Regulations shall be replaced by reference to the First-tier Tribunal and insert into regulation 2 of the 2004 Regulations a definition of the First-tier Tribunal.

These Regulations also amend regulation 8(3) of the 2004 Regulations which provided that the Tribunal may strike out an appeal and make a costs order as defined in the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002.

This provision has been removed because the new First-tier Tribunal's power to dismiss appeals and award costs is provided for, and will be regulated, by the 2007 Act itself and the Tribunal Procedure Rules to be made under section 22 of the 2007 Act.

The Statutory Instrument is made under sections 79H (1) and (2) and 104 (4) the Children Act 1989.

- (v) **Implementation** – This instrument follows the negative resolution procedure, and will come into force on 03 November.
- (vi) **Consultation** – Given that this is a technical change necessitated by changes in primary legislation, public consultation is not considered appropriate.
- (V) **Regulatory Impact Assessment** – a Regulatory Impact Assessment has not been prepared as this legislation simply updates existing legislation to account for technical changes required as a result of the Tribunals Courts and Enforcement Act 2007.