

Explanatory Memorandum to The Children Act 1989 (Amendment of Miscellaneous Regulations) (Wales) Regulations 2009, **SI 2009/3041 (W.265)**

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

Description

The Children Act 2004 extended the meaning of “organisation” in the Children Act 1989 to include an unincorporated association. These regulations make amendments to the Childminding and Day Care (Wales) Regulations 2002 and the Registration of Social Care and Independent Health Care (Wales) Regulations 2002 to give administrative effect to that amendment. They also amend the schedule of documents and information that an applicant for registration is required to provide where a person has been appointed to be in charge of day care.

Matters of special interest to the Subordinate Legislation Committee

There are no matters of special interest raised by the statutory instrument.

Legislative Background

The regulations are made in exercise of the power conferred upon Welsh Ministers by sections 76C and 104(4) of the Children Act 1989.

The Statutory Instrument is to be made using the negative resolution procedure.

Purpose and intended effect of the legislation

This Statutory Instrument amends the Child Minding and Day Care (Wales) Regulations 2002 and also the Registration of Social Care and Independent Health Care (Wales) Regulations 2002 to make provision to give effect to the extension of the meaning of ‘organisation’ in the Children Act 1989 to include unincorporated associations. Also amended is the schedule of documents and information that an applicant for registration is required to provide where a person has been appointed to be in charge of day care provision for children who are under eight.

The regulatory provision will allow for the implementation of the registration of unincorporated associations as providers of day care for the under eights. Previously, only individuals or bodies corporate could be registered.

Currently, where a person in charge (PIC) has been appointed within a day care setting, an application for registration of that setting does not need to be accompanied by a prescribed schedule of documents and information, which include for example; a description of the premises, operating hours, statement of purpose, description of the area and security arrangements.

However, several of these documents relate directly to regulations which Care and Social Services Inspectorate Wales (CSSIW) need to be satisfied are being complied with. CSSIW have no legal power to request these documents.

This is not a problem while people happily provide them but will be a problem if any applicant fails to do so.

This subordinate legislation will allow us to correct the regulations so that CSSIW are able to demand the full schedule of documents and information, allowing them to make a decision on whether the setting is meeting existing legal requirements.

Implementation

Should the legislation be annulled, CSSIW will not be able to require information from unincorporated associations who wish to register, and will remain reliant on the good will of the Person in Charge of a day care setting to provide the documents required to check compliance with existing regulations.

Consultation

There is no statutory requirement to consult prior to amending the regulations. As the Amendment Regulations would make technical changes consequent upon a change to primary legislation, public consultation would not be appropriate. However, on 25th September the main national childcare umbrella organisations were invited to submit their comments on the proposals. A deadline of 23rd October was set for receipt of comments.

Only one response was received and this was supportive of the proposed amendments.

Regulatory Impact Assessment

A Regulatory Impact Assessment has not been produced because the legislation simply amends existing legislation to effect the change to

the Children Act 2004, extending the meaning of 'organisation' to include unincorporated associations.

In relation to the provision of further information required of persons in charge, the amendments will not result in any change in practice, but will enable CSSIW to require the provision of information, whereas currently it is provided on a voluntary basis.

The regulations will impose no additional costs on either local authorities or the voluntary sector.