
WELSH STATUTORY INSTRUMENTS

2010 No. 2574

The Child Minding and Day Care (Wales) Regulations 2010

PART 5

ACTIVITIES OF PERSONS REGISTERED UNDER PART 2 OF THE MEASURE

Safeguarding and promotion of welfare

20.—(1) The registered person must act as a child minder or provide day care, as the case may be, in such a way as to—

- (a) promote and make proper provision for the welfare of relevant children; and
- (b) make proper provision for the care, education, supervision and, where appropriate, treatment, of relevant children.

(2) The registered person must ensure that every person who has attained the age of 16 and who—

- (a) lives on the relevant premises;
- (b) works on the relevant premises (other than a person mentioned in regulation 28); or
- (c) is otherwise present on the relevant premises and has or is likely to have regular contact with relevant children,

is suitable to have such contact.

(3) For the purposes of paragraph (2), a person who works on the relevant premises includes a person who works on a voluntary basis.

(4) The registered person must confirm to the Welsh Ministers that in respect of each person mentioned in paragraph (2) —

- (a) an enhanced criminal record certificate has been issued; and
- (b) where appropriate⁽¹⁾, the person is registered with the ISA and that the person has provided their ISA registration number to the registered person.

(5) If the registered person is not entitled to receive, in respect of a person referred to in paragraph (2) the information or documentation upon which to base the confirmation required by paragraph (4), the registered person must ensure that any such person is appropriately supervised at all times when he or she is in contact with a relevant child or children.

(6) The registered person must, for the purpose of providing care to relevant children and making proper provision for their welfare, so far as practicable, ascertain and take into account their wishes and feelings.

(7) The registered person must make suitable arrangements to ensure that while relevant children are in the care of the registered person—

(1) The requirement for persons undertaking regulated activity in child care settings to register with the ISA under the Vetting and Barring Scheme is being introduced incrementally in accordance with Regulations made under the Safeguarding Vulnerable Groups Act 2006 (c. 47). In this respect the term “where appropriate” is to be interpreted in accordance with a person’s requirement to register with the ISA explained in the *Vetting and Barring Scheme Guidance* issued by the Home Office in March 2010 (ISBN - 978 - 1 - 84987 - 2020 7).

- (a) their privacy and dignity is respected;
- (b) due regard is paid to their sex, religious persuasion, racial origin, cultural and linguistic background and any disability affecting them.

Food provided for children

21.—(1) The registered person must ensure, where food is provided to relevant children by the registered person, that—

- (a) they are provided with food which—
 - (i) is served in adequate quantities and at appropriate intervals;
 - (ii) is properly prepared, wholesome and nutritious;
 - (iii) is suitable for their needs and meets their reasonable preferences; and
 - (iv) is sufficiently varied; and
- (b) any special dietary need of a relevant child which is due to the child's health, religious persuasion, racial origin or cultural background is met.

(2) The registered person must ensure that relevant children are provided with access to fresh drinking water at all times while they are under the care of the registered person.

Arrangements for the protection of children

22.—(1) The registered person must draw up and implement a written policy which—

- (a) is intended to safeguard relevant children from abuse or neglect; and
- (b) sets out the procedure to be followed in the event of any allegation of abuse or neglect.

(2) The procedure under paragraph (1)(b) must in particular provide for—

- (a) liaison and co-operation with any local authority which is, or may be, making child protection enquiries in relation to a relevant child;
- (b) the prompt referral to the local authority for the area in which the relevant premises are situated, of any allegations of abuse or neglect affecting a relevant child;
- (c) written records to be kept of any allegation of abuse or neglect, and of the action taken in response;
- (d) consideration to be given in each case to the measures which may be necessary to protect relevant children following an allegation of abuse or neglect;
- (e) a requirement for any person working with relevant children to report any concerns about the welfare or safety of a child to one of the following—
 - (i) the registered person;
 - (ii) a constable;
 - (iii) a person responsible for exercising the functions of the Welsh Ministers under Part 2 of the Measure;
 - (iv) an officer of the local authority for the area in which the relevant premises are situated; or
 - (v) an officer of the National Society for the Prevention of Cruelty to Children;
- (f) arrangements giving persons working with relevant children, access at all times and in an appropriate form, to information which would enable them to contact the local authority for the area in which the relevant premises are situated, or the appropriate office concerning the welfare or safety of such children.

Behaviour management, discipline and restraint

23.—(1) No measure of control, restraint or discipline which is excessive, unreasonable or contrary to paragraph (5) may be used at any time on relevant children.

(2) The registered person must, in accordance with this regulation, draw up and implement a written behaviour management policy setting out—

(a) the measures of control, restraint and discipline which may be used on the relevant premises; and

(b) the means whereby appropriate behaviour is to be promoted on those premises.

(3) Subject to paragraphs (5) and (6), only such measures of control, restraint and discipline as are provided for in the said behaviour management policy may be used on relevant children.

(4) The registered person must keep under review and where appropriate revise the behaviour management policy and notify the appropriate office of any such revision within 28 days of the revision having been made.

(5) Subject to paragraph (6), neither the following measures nor a threat to use one or more of them may be used on relevant children—

(a) any form of corporal punishment;

(b) subject to the provision of any court order relating to contact between the child and any person, any restriction on a child's contact or communication with his or her parents;

(c) any punishment relating to the consumption or deprivation of food or drink;

(d) any requirement that a child wear distinctive or inappropriate clothes;

(e) the use or withholding of medication or medical or dental treatment as a disciplinary measure;

(f) the intentional deprivation of sleep;

(g) any intimate physical examination of a child;

(h) the withholding of any aids or equipment needed by a disabled child;

(i) any measure which involves—

(i) any child in the imposition of any measure against any other child; or

(ii) the punishment of a group of children for the behaviour of an individual child.

(6) Nothing in this regulation prohibits—

(a) the taking of any action by, or in accordance with the instructions of, a registered medical or dental practitioner which is necessary to protect the health of a child;

(b) the taking of any action immediately necessary to prevent injury to any person or serious damage to property.

Health needs of children

24.—(1) The registered person must promote and protect the health of relevant children.

(2) In particular the registered person must ensure that—

(a) each child is provided with such individual support as may be required in the light of any particular health needs or disability of the child; and

(b) at all times, at least one person caring for relevant children has a suitable first aid qualification.

Hazards and safety

25. The registered person must ensure that—

- (a) all parts of the relevant premises to which relevant children have access are so far as reasonably practicable free from hazards to their safety;
- (b) any activities in which relevant children participate are so far as reasonably practicable free from avoidable risks; and
- (c) unnecessary risks to the health or safety of relevant children are identified and so far as possible eliminated.

Use and storage of medicines

26.—(1) The registered person must make suitable arrangements for the safekeeping of any medicine on relevant premises.

(2) In particular the registered person must ensure, subject to paragraph (3), that—

- (a) relevant children are prevented from having unsupervised access to any medicine;
- (b) any medicine that is prescribed for a relevant child is administered as prescribed, to the child for whom it is prescribed, and to no other child; and
- (c) a written record is kept of the administration of any medicine to a relevant child.

(3) In this regulation, “prescribed” means—

- (a) ordered for a patient for provision to that patient under or by virtue of section 80 of the National Health Service (Wales) Act 2006 (*arrangements for pharmaceutical services*)(2); or
- (b) in a case not falling within sub-paragraph (a), prescribed for a patient under section 58 of the Medicines Act 1968 (*medicinal products on prescription only*)(3).

Staffing

27. The registered person must ensure that there is at all times, having regard to—

- (a) the statement of purpose and the number and needs (including any needs arising from any disability) of the relevant children, and
- (b) the need to safeguard and promote their health and welfare,

a sufficient number of suitably qualified, skilled and experienced persons looking after the relevant children.

Suitability of workers

28.—(1) Subject to paragraphs (5) and (6), the registered person must not—

- (a) employ under a contract of employment a person to look after relevant children unless that person is suitable to do so;
- (b) allow a volunteer to look after relevant children unless that person is suitable to do so.

(2) For the purposes of paragraph (1), a person is not suitable to look after relevant children unless—

- (a) where that person works for a child minder—

(2) 2006 c. 42.

(3) 1968 c. 67.

- (i) the person satisfies the requirements prescribed in paragraphs 8 to 12 of Part 1 of Schedule 1; and
 - (ii) there is full and satisfactory information or documentation available in relation to the person in respect of each of the matters specified in paragraph 11 (e) to (g) and (j) to (l) of Part 1 of Schedule 2;
- (b) where that person works for a provider of day care—
 - (i) the person satisfies the requirements prescribed in paragraphs 32 to 36 of Part 2 of Schedule 1; and
 - (ii) there is full and satisfactory information or documentation available in relation to the person in respect of each of the matters specified in paragraph 34 (e) to (g) and (j) to (l) of Part 2 of Schedule 2.
- (3) This paragraph applies where an individual has applied for an enhanced criminal record certificate but the certificate has not been issued.
- (4) The registered person must ensure that—
 - (a) any offer of employment to, or other arrangement about working in the relevant premises made with or in respect of a person described in paragraph (1), is subject to the relevant requirements of paragraph (2) being complied with in relation to that person; and
 - (b) unless paragraph (5) or (6) applies, no such person starts work in the relevant premises until such time as the relevant requirements of paragraph (2) have been complied with in relation to that person.
- (5) Where the following conditions apply, the registered person may permit a person to start work in or for the purposes of the relevant premises notwithstanding the provision in paragraphs (1) and (4)(b)—
 - (a) the registered person has taken all reasonable steps to obtain full information in respect of each of the matters listed in paragraph (2) as it applies to that person, but the enquiries in relation to any of the matters listed in—
 - (i) paragraph 11 (e), (f) and (l) of Part 1 of Schedule 2, in respect of a person who is to work or works for a child minder, or
 - (ii) paragraph 34 (e), (f) and (l) of Part 2 of Schedule 2, in respect of a person who is to work or works for a provider of day care,are incomplete;
 - (b) full and satisfactory information in relation to that person has been obtained in respect of the matters specified in—
 - (i) paragraph 11 of Part 1 of Schedule 1 and paragraph 11 (j) and (k) of Part 1 of Schedule 2, in respect of a person who is to work or works for a child minder; or
 - (ii) paragraph 35 of Part 2 of Schedule 1 and paragraph 34 (j) and (k) of Part 2 of Schedule 2, in respect of a person who is to work or works for a provider of day care;
 - (c) in the reasonable opinion of the registered person the circumstances are exceptional; and
 - (d) pending receipt of, and being satisfied with regard to, any outstanding information, the registered person ensures that the person is appropriately supervised while carrying out his or her duties.
- (6) Where the following conditions apply, the registered person may permit a person to start work in or for the purposes of the relevant premises notwithstanding paragraphs (1) and (4)(b)—
 - (a) paragraph (3) of this regulation applies;

- (b) full and satisfactory information in relation to that person has been obtained in respect of the matters specified in—
 - (i) paragraphs 8 to 10 and 12 of Part 1 of Schedule 1 and paragraph 11 (e) to (g) and (j) to (l) of Part 1 of Schedule 2, in respect of a person who is to work or works for a child minder; or
 - (ii) paragraph 32 to 34 and 36 of Part 2 of Schedule 1 and paragraph 34 (e) to (g) and (j) to (l) of Part 2 of Schedule 2, in respect of a person who is to work or works for a provider of day care;
- (c) the person has provided a written declaration of the details of any criminal offences of which that person has been convicted, including details of any convictions which are spent within the meaning of section 1 of the Rehabilitation of Offenders Act 1974⁽⁴⁾ and which may be disclosed by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975⁽⁵⁾ or in respect of which he or she has been cautioned;
- (d) in the reasonable view of the registered person the interests of the service will not be met unless the person can be appointed; and
- (e) pending receipt of, and satisfying himself or herself with regard to, the certificate referred to in paragraph (3), the registered person ensures that the person is appropriately supervised while carrying out his or her duties.

Employment of staff

- 29.**—(1) The registered person must operate a disciplinary procedure which, in particular—
- (a) provides for the suspension, and the taking of other action short of suspension, in relation to an employee where appropriate in the interests of the safety or welfare of relevant children; and
 - (b) provides that the failure on the part of an employee to report an incident of abuse, or suspected abuse of a relevant child to an appropriate person is a ground on which disciplinary proceedings may be instituted.
- (2) For the purposes of paragraph (1)(b), an appropriate person is—
- (a) the registered person,
 - (b) a person responsible for the exercise of functions of the Welsh Ministers under Part 2 of the Measure,
 - (c) an officer of the local authority for the area in which the relevant premises are situated,
 - (d) a constable, or
 - (e) an officer of the National Society for the Prevention of Cruelty to Children.
- (3) The registered person must ensure that all employees who look after relevant children—
- (a) receive appropriate training, supervision and appraisal; and
 - (b) have an opportunity from time to time to obtain further qualifications appropriate to the work they perform.

Keeping of records

- 30.**—(1) Subject to paragraph (2), the registered person must—
- (a) maintain and, whilst relevant children are being cared for by the registered person, keep at the relevant premises, records in relation to the matters specified in Schedule 3;

(4) 1974 c. 53.

(5) S.I. 1975/1023.

- (b) preserve every entry in the records specified in paragraphs 1 to 9 of that Schedule for a period of three years from the date on which the last entry was made; and
 - (c) make the records available for inspection by the Welsh Ministers at their request.
- (2) A registered person who provides day care by means of open access play provision is not required to keep the records specified in paragraphs 5, 6 (in so far as hours of attendance are concerned) and 9 of that Schedule.
- (3) Where a registered person ceases to act as a child minder or to provide day care, the registered person must ensure that the records maintained in accordance with paragraph (1) are kept securely and must make them available for inspection by the Welsh Ministers at their request.

Provision of information

31.—(1) A registered person must notify the appropriate office of the occurrence of any of the events set out in Schedule 4 and must at the same time provide the Welsh Ministers with any information specified in that Schedule in respect of that event.

(2) Notification must be made—

- (a) where it is reasonably practicable to do so, in advance of the event occurring; and
- (b) in all other cases as soon as reasonably practicable, but not later than 14 days after the event has occurred.

(3) The registered person must without delay notify the parent of a relevant child of any significant incident affecting the child's welfare and must make the records maintained in accordance with regulation 30, in so far as they relate to a relevant child, available for inspection by that child's parent unless to do so is not reasonably practicable or would place the child's welfare at risk.

(4) The registered person must provide the Welsh Ministers upon their request with such information as they may require about the provision of care to relevant children, including financial information and confirmation of insurance cover in respect of liability which may be incurred by the registered person in respect of death, injury, public liability, damage or other loss.

Complaints

32.—(1) The registered person must prepare and follow a written procedure ("the complaints procedure") for considering complaints made to the registered person by or on behalf of relevant children.

(2) The complaints procedure must be appropriate to the needs of children.

(3) The complaints procedure must include provision for the consideration of complaints made about the registered person.

(4) The registered person must ensure that the following persons are aware of the existence of the complaints procedure and take all reasonable steps to give a copy of the complaints procedure in an appropriate format or such format as may be requested to—

- (a) relevant children;
- (b) their parents; and
- (c) a local authority arranging for child minding or day care for a relevant child.

(5) The registered person must ensure that the staff employed to look after relevant children are informed about, given a copy of, and appropriately trained in the operation of the complaints procedure.

(6) The complaints procedure must include—

- (a) the name, address and telephone number of the appropriate office; and

- (b) the procedure, (if any), that has been notified to the registered person by the Welsh Ministers, for the making of complaints to the Welsh Ministers.
- (7) The complaints procedure must include provision for the local resolution of complaints at an early stage where appropriate.
- (8) Where the complaints procedure includes provision for a formal consideration, this provision must be approved by the Welsh Ministers.
- (9) The approval of the Welsh Ministers under paragraph (8) will only be given where the complaints procedure includes provision for the formal consideration to be undertaken by a person who is independent of the provision of care to relevant children.

Handling complaints

33.—(1) The complaints procedure prepared in accordance with regulation 32 must be operated in accordance with the principle that the welfare of the child is safeguarded and promoted and account must be taken of the ascertainable wishes and feelings of the child.

(2) When a complaint is made, the registered person must advise the complainant of their right at any time to complain to the Welsh Ministers or, where relevant, to the local authority which has arranged for the provision of child minding or day care for a relevant child.

(3) The registered person must inform the complainant of the availability of any advocacy services that the registered person believes may be of assistance to the complainant. Where relevant and the complainant is a child, the registered person must advise the complainant that a local authority receiving a complaint must provide information and assistance for complainants, and that it must in particular offer help in obtaining an advocate.

(4) The registered person may in any case where it is appropriate to do so, and with the agreement of the complainant, make arrangements for conciliation, mediation or other assistance for the purposes of resolving the complaint.

(5) The registered person must keep a written record of any complaint, the outcome of the investigation and any action taken in response.

(6) The registered person must supply to the appropriate office at the request of the Welsh Ministers a statement containing a summary of the complaints made during the preceding twelve months and the action taken in response to each complaint.

Local resolution

34.—(1) Complaints that are dealt with locally⁽⁶⁾ must be resolved by the registered person as soon as reasonably practicable and in any event within 14 days.

(2) Where the complaint is resolved under paragraph (1), the registered person must confirm in writing to the complainant the agreed resolution.

(3) The registered person must, at the request of the Welsh Ministers or any local authority which has arranged for the provision of child minding or day care for a relevant child, confirm the local resolution of a complaint.

(4) The time limit in paragraph (1) may be extended for up to a further 14 days with the agreement of the complainant.

(6) The terms “locally” and “Local resolution” are to be construed in accordance with the principles set out in Listening and Learning: A guide to handling complaints and representations in local authority social services in Wales (ISBN 0 - 11 - 091240 - 3) published by the Welsh Assembly Government in 2005.

Formal consideration

35.—(1) Complaints that are dealt with by way of formal consideration⁽⁷⁾ must be resolved as soon as reasonably practicable and in any event within 35 working days of the request for formal consideration.

(2) The outcome of a formal consideration must be confirmed in writing by the registered person to the complainant and must summarise the nature and substance of the complaint, the conclusions and the action to be taken as a result.

(3) The registered person must send a copy of a written response to a complaint to the appropriate office and to any local authority which has arranged for the provision of child minding or day care for a relevant child.

(4) The time limit in paragraph (1) may be extended with the agreement of the complainant.

(5) If the complaint has not been resolved within 35 days of the request for formal consideration, the registered person must notify the appropriate office of the complaint and reasons for the delay in resolution.

Complaints subject to concurrent consideration

36.—(1) Where a complaint relates to any matter—

- (a) about which the complainant has stated in writing that he or she intends to take proceedings in any court or tribunal, or
- (b) about which the registered person is taking or is proposing to take disciplinary proceedings, or
- (c) about which the registered person has been notified that an investigation is being conducted by any person or body in contemplation of criminal proceedings, or
- (d) about which a meeting involving other bodies including the police has been convened to discuss issues relating to the protection of children or vulnerable adults, or
- (e) about which the registered person has been notified that there are current investigations in contemplation of proceedings under section 59 of the Care Standards Act 2000 (*removal etc. from register*)(⁸), or
- (f) about which the registered person has been notified that a local authority has or is instigating child protection enquiries,

the registered person must consider, in consultation with the complainant and any other person or body which they consider appropriate to consult, how the complaint should be handled. Such complaints are referred to for the purposes of this regulation as “complaints subject to concurrent consideration”.

(2) The consideration of complaints subject to concurrent consideration may be discontinued if at any time it appears to the registered person that to continue would compromise or prejudice the other consideration.

(3) Where the registered person decides to discontinue the consideration of a complaint under paragraph (2) the registered person must give notice of that decision to the complainant.

(4) Where the registered person discontinues the consideration of any complaint under paragraph (2), consideration can be resumed at any time.

(7) “Formal consideration” is to be construed in accordance with the principles set out in *Listening and Learning: A guide to handling complaints and representations in local authority social services in Wales* (ISBN 0 - 11- 091240 - 3) published by the Welsh Assembly Government in 2005.

(8) 2000 c. 14.

(5) Where the consideration of a complaint has been discontinued under paragraph (2) the registered person must ascertain the progress of the concurrent consideration and notify the complainant when it has been concluded.

(6) The registered person must resume consideration of any complaint where the concurrent consideration is discontinued or completed and the complainant requests that the complaint be considered under these Regulations.

Fitness of premises

37.—(1) The registered person must not use premises for child minding or the provision of day care, as the case may be, unless they are in a location and of a physical design and layout, which are suitable for the purpose of achieving the aims and objectives set out in the statement of purpose.

(2) The registered person must ensure that all parts of the relevant premises used by relevant children are—

- (a) adequately lit, heated and ventilated;
- (b) secure from unauthorised access;
- (c) suitably furnished and equipped;
- (d) of sound construction and kept in good structural repair externally and internally;
- (e) clean and reasonably decorated and maintained; and
- (f) equipped with what is reasonably necessary, and adapted as necessary, in order to meet the needs arising from the disability of any relevant child.

(3) The registered person must ensure that the relevant premises are kept free from offensive odours and must make suitable arrangements for the disposal of general and clinical waste.

(4) The registered person must ensure that when care is provided in indoor premises there are available on the relevant premises for use by relevant children in conditions of appropriate privacy—

- (a) a sufficient number of wash basins supplied with hot and cold running water, and
- (b) a sufficient number of lavatories which are suitable for relevant children,

for the number and sex of relevant children.

(5) The registered person must ensure that where food is provided in indoor premises there are suitable and sufficient facilities and equipment for the preparation storage and consumption of food on the relevant premises.

Fire precautions

38.—(1) Subject to paragraph (2) the registered person must, in relation to relevant premises—

- (a) take adequate precautions against the risk of fire, including the provision of fire prevention and detection equipment;
- (b) provide adequate means of escape in the event of a fire;
- (c) make adequate arrangements—
 - (i) for detecting, containing and extinguishing fires;
 - (ii) for giving warnings of fires;
 - (iii) for evacuation in the event of a fire;
 - (iv) for the maintenance of all fire prevention and detection equipment; and
 - (v) for reviewing fire precautions, and testing fire prevention and detection equipment, at suitable intervals;

- (d) make arrangements for persons working with relevant children on relevant premises to receive suitable training in fire prevention;
 - (e) ensure by means of fire drills and practices at suitable intervals, that the persons working with relevant children, and, so far as practicable, the relevant children, are aware of the procedure to be followed in case of fire; and
 - (f) consult with the fire and rescue authority about the matters described in sub-paragraphs (a) to (e).
- (2) Where the Regulatory Reform (Fire Safety) Order 2005⁽⁹⁾ applies to the relevant premises—
- (a) paragraph (1) does not apply; and
 - (b) the registered person must ensure that the requirements of that Order and any regulations made under it, except for article 23 (duties of employees), are complied with in respect of the premises.
- (3) In this regulation “fire and rescue authority” (“*awdurdod tân ac achub*”) means the fire and rescue authority under the Fire and Rescue Services Act 2004⁽¹⁰⁾ for the area in which the relevant premises are situated.

⁽⁹⁾ S.I. 2005/1541.

⁽¹⁰⁾ 2004 c. 21.