

## SCHEDULE 3

Article 4

### SAVINGS AND TRANSITIONAL PROVISIONS IN RESPECT OF PART XA OF AND SCHEDULE 9A TO THE 1989 ACT, AND PART 2 OF THE MEASURE

#### Interpretation

1. In this Schedule—

- “Part 2 of the Measure” (“*Rhan 2 o'r Mesur*”) means sections 19 to 56 of the Measure;
- “the 2002 Regulations” (“*Rheoliadau 2002*”) means the Child Minding and Day Care (Wales) Regulations 2002(1);
- “the 2010 Regulations” (“*Rheoliadau 2010*”) means the Child Minding and Day Care (Wales) Regulations 2010(2);
- “the Suspension Regulations 2004” (“*Rheoliadau 2004*”) means the Suspension of Day Care Providers and Child Minders (Wales) Regulations 2004(3);
- “the Exceptions Order 2010” (“*Gorchymyn Eithriadau*”) means the Child Minding and Day Care Exceptions (Wales) Order 2010;
- “the Disqualification Regulations 2010” (“*Rheoliadau Anghymwyso 2010*”) means the Disqualification from Caring for Children (Wales) Regulations 2010(4);
- “the relevant date” (“*y dyddiad perthnasol*”) means 1 April 2011;
- “transfer” (“*trosglwyddo*”) in relation to registration refers to the process for which provision is made in paragraph 2(2) and “transferred” (“*trosglwyddwyd*”) is to be construed accordingly.

#### Registration of Child Minders and Day Care Providers under Part XA of and Schedule 9A to the 1989 Act on 1 April 2011

2.—(1) This paragraph applies in respect of a person who immediately before the relevant date—

- (a) is registered as a child minder by the Welsh Ministers under section 79(F)(1) of the 1989 Act (*grant or refusal of registration*); or
- (b) is registered as a provider of day care for children by the Welsh Ministers under section 79(F)(2) of the 1989 Act.

(2) With effect from the relevant date, a person referred to in sub-paragraph (1) will, for the purposes of Part 2 of the Measure, be treated as having applied for and having been granted registration.

(3) Where a person’s registration is transferred pursuant to sub-paragraph (2), any condition, which was imposed upon that person under section 79F(3) (*grant or refusal of registration*) or 79M(2) (*appeals*) of the 1989 Act and which applied to a person’s registration immediately before the relevant date, continues to have effect as if it were a condition imposed under section 29 (*conditions on registration*) or section 37 (*appeals*) of the Measure.

(4) Subject to paragraph 14, this paragraph applies even when immediately before the relevant date the person’s registration is suspended by the Welsh Ministers in accordance with regulation 3 of the Suspension Regulations 2004.

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(1) S.I.2002/812 (W.92).  
(2) S.I. 2010/2574 (W.214).  
(3) S.I. 2004/3282 (W.285).  
(4) S.I. 2010/1703 (W.163).

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(5) Sub-paragraph (2) does not apply in respect of a person who, before the relevant date, has communicated to the Welsh Ministers the wish not to be registered as a child minder under section 24 or, as the case may be, provider of day care for children under section 26 of the Measure.

(6) Sub-paragraph (2) does not apply in respect of a person who immediately before the relevant date was registered as child minder under section 79F(1) or, as the case may be, a provider of day care under section 79F(2) of the 1989 Act and who, on the relevant date and in accordance with the coming into force of the Exceptions Order 2010, is no longer eligible to register as child minder under section 24 or, as the case may be, a provider of day care for children under section 26 of the Measure.

### **Certificates of registration**

3.—(1) This paragraph applies in relation to any person whose registration is transferred under paragraph 2(2).

(2) The transfer does not constitute a grant of registration for the purposes of section 28(1)(b) or (2)(b) of the Measure (*entry on the register and certificates*).

(3) A certificate issued by the Welsh Ministers to that person in relation to the original registration under section 79F of the 1989 Act which was current immediately before the relevant date will, subject to sub-paragraphs (4) and (5), have effect for all purposes as if it was issued on the relevant date pursuant to section 28(1)(b) or (2)(b) of the Measure.

(4) Section 28(3) of the Measure does not have effect in relation to a certificate to which sub-paragraph (3) refers.

(5) For the purposes of section 28(4) of the Measure (which provides for the issue of amended certificates due to a change of circumstances) and without prejudice to its effect otherwise, the occasion of the first inspection following the relevant date by an authorised inspector of—

- (a) child minding, or
- (b) day care on any premises

provided by a person to whom this paragraph applies will be taken to constitute a change of circumstances for the purposes of that section in relation to the registration concerned.

### **Persons not eligible for registration under Part XA of and Schedule 9A to the 1989 Act before 1 April 2011**

4.—(1) This sub-paragraph applies to any person (“an unregistered child minder”) who before the relevant date—

- (a) is not eligible to register as a child minder under Part XA of and Schedule 9A to the 1989 Act but is required to register under Part 2 of the Measure;
- (b) looks after children under the age of eight on domestic premises for reward; and
- (c) duly makes an application before 1 July 2011 under section 24 of the Measure for registration as a child minder.

(2) The provisions under section 21(1), (2), (5) and (6) of the Measure do not apply to an unregistered child minder under sub-paragraph (1)—

- (a) until such time as the application is granted, either unconditionally or subject only to conditions which have been agreed in writing with the Welsh Ministers; or
- (b) if the application is granted subject to conditions which have not been so agreed, or refused—

- (i) if no appeal is brought, until the expiration of the period of 28 days after service upon the unregistered provider of the decision of the Welsh Ministers; or

- (ii) if an appeal is brought, until it is determined or abandoned.
- (3) This sub-paragraph applies to any person (“an unregistered provider of day care for children”) who before the relevant date—
  - (a) is not eligible to register as provider of day care under Part XA of and Schedule 9A to the 1989 Act;
  - (b) looks after children under the age of eight on premises other than domestic premises for reward; and
  - (c) duly makes an application before 1 July 2011 under section 26 of the Measure for registration as a provider of day care for children.
- (4) The provisions under section 23 (1) and (2) of the Measure do not apply to an unregistered provider of day care for children under sub-paragraph (3) in respect of their premises—
  - (a) until such time as the application is granted, either unconditionally or subject only to conditions which have been agreed in writing with the Welsh Ministers; or
  - (b) if the application is granted subject to conditions which have not been so agreed, or refused—
    - (i) if no appeal is brought, until the expiration of the period of 28 days after service upon the unregistered provider of the decision of the Welsh Ministers; or
    - (ii) if an appeal is brought, until it is determined or abandoned.

#### **Applications for registration under Part XA of and Schedule 9A to the 1989 Act: undetermined applications**

5.—(1) Where a person has applied for registration as a child minder under section 79E of the 1989 (*applications for registration*) and, immediately before the relevant date, the Welsh Ministers have not granted or refused the person’s application, the application is to be determined as if it had been made under section 24 of the Measure (*applications for registration: child minding*).

(2) Where a person has applied for registration as a provider of day care under section 79E of the 1989 Act and, immediately before the relevant date, the Welsh Ministers have not granted or refused the person’s application, the application is to be determined as if it had been made under section 26 of the Measure (*applications for registration: day care for children*).

(3) Where this paragraph applies, the Welsh Ministers may only register that person if, had the application been made under Part 2 of the Measure, the Welsh Ministers would have been required by section 24 or, as the case may be, section 26 of the Measure, to grant the application.

#### **Notice of intention to refuse an application for registration under section 79L(1)(a) of the 1989 Act**

6.—(1) This paragraph applies where the Welsh Ministers have, before the relevant date, sent a notice to a person of intention to refuse an application for registration under section 79L(1)(a) of the 1989 Act (*notice of intention to take steps*).

(2) The notice will, on and after the relevant date, be treated as a notice given under section 36(3) of the Measure (*procedure for taking certain steps*).

(3) A person who has, before the relevant date, informed the Welsh Ministers, in accordance with section 79L(3) of the 1989 Act, of the desire to object to the step being taken, will be treated as having given notice under section 36(6) of the Measure.

(4) An objection made before the relevant date under section 79L(3) of the 1989 Act to a step being taken will be treated on or after that date as having been made in pursuance of section 36(6) of the Measure.

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(5) A notice sent to the person in accordance with section 79L(5) of the 1989 Act before the relevant date will be treated on and after that date as being a notice given under section 36(8) of the Measure.

(6) Where this paragraph applies, a notice continues to have effect only to the extent that it could have had effect had it been given under section 36 of the Measure.

#### **Notice of intention to take steps under section 79L(1)(b) to (d) of the 1989 Act**

7.—(1) This paragraph applies where—

- (a) a person's registration is transferred in accordance with paragraph 2(2);
- (b) the Welsh Ministers have, before the relevant date, sent a notice to the person of intention to take one of the steps mentioned in section 79L(1)(b) to (d) of the 1989 Act; and
- (c) that step has not taken effect.

(2) The notice sent to the person under section 79L(1) will, on and after the relevant date, be treated as being notice given under section 36(3) of the Measure.

(3) A person who has, before the relevant date, informed the Welsh Ministers of the desire to object to the step being taken under section 79L(3) of the 1989 Act, will be treated as having given notice under section 36(6) of the Measure.

(4) An objection made before the relevant date under section 79L(3) of the 1989 Act to a step being taken will be treated on and after that date as having been made in pursuance to section 36(6) of the Measure.

(5) A notice sent to a person by the Welsh Ministers in accordance with section 79L(5) of the 1989 Act before the relevant date will be treated on and after that date as being notice given under section 36(8) of the Measure.

(6) Where this paragraph applies, a notice continues to have effect only to the extent that it could have effect had it been given under section 36 of the Measure.

#### **Appeals against steps mentioned in section 79L(1) of the 1989 Act**

8.—(1) This paragraph applies where, before the relevant date, an appeal has been made to the First-tier Tribunal under section 79M(1) of the 1989 Act (*appeals*) against a step taken by the Welsh Ministers mentioned in section 79L(1), in respect of which the Tribunal has not reached a decision under section 79M(2).

(2) The appeal will be treated, on and after the relevant date, as being an appeal under section 37 of the Measure (*appeals*).

(3) Where this paragraph applies, an appeal falls to be decided as if the step in respect of which the appeal is brought had been taken under the Measure.

#### **Appeals: protection of children in an emergency**

9.—(1) This paragraph applies where, before the relevant date, an appeal has been made to the First-Tier Tribunal under section 79M(1) of the 1989 Act against an order under section 79K of the 1989 Act (*protection of children in an emergency*), in respect of which the Tribunal has not reached a decision under section 79M(2).

(2) The appeal will be treated, on and after the relevant date, as being an appeal under section 37 of the Measure.

### **Appeals: disqualification**

**10.**—(1) This paragraph applies where, before the relevant date, an appeal has been made to the First-Tier Tribunal under section 79M(1) of the 1989 Act against a determination by the Welsh Ministers under regulation 9 of the Disqualification Regulations 2010, in respect of which the Tribunal has not reached a decision under section 79M(2).

(2) Subject to article 3, the appeal will be treated, on and after the relevant date, as being an appeal made in accordance with the Disqualification Regulations 2010 and will be determined in accordance with section 79M of the 1989 Act.

### **Notice under section 79D of the 1989 Act**

**11.** Where before the relevant date, the Welsh Ministers have served an enforcement notice under section 79D(2) of the 1989 Act, the notice continues to have effect on and after the relevant date as if it had been served under section 21(3) of the Measure (*duty of child minders to register*).

### **Compliance notices under the 2002 Regulations**

**12.** Where before the relevant date, the Welsh Ministers have issued a compliance notice in accordance with regulation 3C of the 2002 Regulations (*compliance notification*), on or after the relevant date that notice will be treated as having been given under regulation 18 of the 2010 Regulations.

### **National Minimum Standards**

**13.** In exercising functions under Part 2 of the Measure, the Welsh Ministers may have regard to—

- (a) anything done, or alleged to have been done, by a person registered under Part XA of and Schedule 9A to the 1989 Act to comply with the duty imposed by regulation 23 of the 2002 Regulations (*standards*);
- (b) any failure, or alleged failure, by a person registered under Part XA of and Schedule 9A to the 1989 Act to comply with the duty imposed by regulation 24 of the 2002 Regulations.

### **Suspension**

**14.**—(1) This paragraph applies where immediately before the relevant date a person's registration is suspended by the Welsh Ministers under regulation 3 of the Suspension Regulations 2004 (*power to suspend registration*).

(2) The person's registration will, on and after the relevant date, be treated as suspended by the Welsh Ministers under regulation 40 of the 2010 Regulations (*power to suspend registration*).

(3) Where a person has appealed to the Tribunal under regulation 8 of the Suspension Regulations 2004 (*rights of appeal*) and the First-Tier Tribunal has not reached a decision, the appeal will, on and after the relevant date, be treated as having been made under regulation 45 of the 2010 Regulations (*rights of appeal*).

### **Disqualification: waivers**

**15.**—(1) Where before the relevant date the Welsh Ministers have given consent to waive a disqualification under regulation 9 of the Disqualification Regulations 2010 (and have not withdrawn that consent) that consent will continue to have effect on and after the relevant date.

(2) Where before the relevant date a person has requested that the Welsh Ministers give consent to waive a disqualification under regulation 9 of the Disqualification Regulations 2010, and immediately before the relevant date, the Welsh Ministers have not made a determination in respect

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of the request, the Welsh Ministers must make the determination in accordance with regulation 9 of the Disqualification Regulations 2010.

(3) A consent given by a local authority and referred to in regulation 9(3)(b) of the Disqualification Regulations 2010 continues to have effect on and after the relevant date.

**Protection of children in an emergency: application under section 79K of the 1989 Act**

16. Where the Welsh Ministers have applied to a justice of the peace for an order—
- (a) cancelling a person’s registration under section 79K(1)(a)(i) (protection of children in an emergency) of the 1989 Act and, immediately before the relevant date, the justice of the peace has not made the order, the 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*);
  - (b) seeking to vary or remove any condition upon a person’s registration, or to impose a new condition under section 79K(1)(a)(ii) or (iii) respectively of the 1989 Act and, immediately before the relevant date, the justice of the peace has not made the order, the Welsh Ministers will withdraw the application and take action in accordance with the provisions of section 35 of the Measure (*protection of children in an emergency: changes to conditions*).