

To: Business Committee

From : Jane Hutt AM, Minister for Health and Social Services

EXPLANATORY MEMORANDUM

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

Summary:

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 the where there is a risk of harm that may be posed to children being who are or who may be cared for.

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.

The proposals in relation to a suspension of registration are considered urgent necessary to help protect children.

1. This memorandum is submitted to the Assembly's Business Committee in relation to The Suspension of Day Care Providers and Child Minders (Wales) Regulations 2004 in accordance with Standing Order 24.6.

2. A copy of the Instrument is submitted with this Memorandum.

Enabling Powers:

3. The powers enabling this Instrument to be made are contained in sections 68(1) and (2), 79C(2) and (3), 79M(1)(c) and 104(4) of and paragraph 4 of Schedule 9A to the Children Act 1989. I confirm that the powers enabling this instrument to be made have been transferred to the National Assembly for Wales and in turn, have been delegated to my portfolio as the Minister for Health and Social Services.

Effect:

4. The intended effect of the instrument is to put into place procedures for the suspension of day care providers or childminders in prescribed circumstances, in particular the where there is a risk of harm that may be posed to children being who are or may be cared for.

5. The 2004 Regulations will make provision for the right of appeal to the Protection of Children and Vulnerable Adults and Care Standards Tribunal (Care Standards Tribunal) against a decision to suspend the registration of a day care provider or childminder, or against a refusal to lift that suspension.

Target Implementation:

6. It is intended that the proposed instrument be made on 7th December 2004, with a coming into force date of 20th December 2004.

Financial Implications:

7. In the vast majority of cases registered day care providers and childminders will not be suspended under the proposed new regulations.

8. The new regulations will provide CSIW with the power of suspension in certain circumstances. CSIW has no way of knowing how many suspensions that they might have to consider. However, cancellations by CSIW of registrations of day care providers and child minders are low. The proposed suspension regulations will prescribe the circumstances in which a suspension can be applied for a limited period, in order for full investigations to be carried out, or to allow steps to be taken to reduce or eliminate the risk of harm. For the period 2003-04, CSIW received 730 applications for registration, across all categories. Of the six different types of Under 8's day care settings, only the full day care settings are charged a registration fee. This fee is £125.

9. The Director of Health and Social Care Resources (ref. 1517) has been consulted and has noted that there will be no additional financial implications for the Assembly arising from the implementation of this memorandum, although if a case is taken to the Tribunal there will be a cost, both financial and in terms of workloads.

Regulatory Appraisal:

10. A regulatory appraisal has been carried out in relation to this instrument and is attached.

Consultation:

11. With Stakeholders:

It is felt that these regulations do not need to be tested in full public consultation as they have already been subject to debate and focused consultation since April 2003, through the ongoing quarterly meetings between the Assembly and the national childminding and day care provider representative organisations (as detailed in the Annex to the Regulatory Appraisal). In June 2004, drafts of the regulations were passed to these organisations for comment. None of the responses were in disagreement with the regulations.

12. With Subject Committee:

Health and Social Services Committee were notified of the intention to introduce these regulations (HSS (2)-11-04(p.7)) and Members identified the S.I. for scrutiny. The Subject Committee is due to meet on 6th October 2004 to scrutinise the regulations.

Recommended procedure:

13. Subject to the views of the Business Committee, I recommend that this Instrument proceed to Plenary under the Standard procedure in order to provide opportunity for members to further debate the child protection issues within the remit of the regulations.

Compliance:

14. I confirm that the proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 Section 120);
- be compatible with the Assembly's scheme for sustainable development (Section 121);
- be compatible with Community law (Section 106);
- be compatible with the Assembly's human rights legislation (Section 107);
- be compatible with any international obligations binding the UK Government and the Assembly (Section 108).

15. I confirm that the information in this memorandum has been cleared with the Office of the Counsel General (OCG) and the Assembly Compliance Officer (ref. SR/09/04/2053).

16. Drafting Lawyer: Therese Gray, ext.6813
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September 2004

Jane Hutt AM
Minister for Health and Social Services