

Date: Wednesday 3 November 2004

Venue: Committee Room 3, National Assembly for Wales

Title: The Day Care (Application to Schools) (Wales) Regulations 2005

Purpose

1. To seek the Committee's views on The Day Care (Application to Schools) (Wales) Regulations 2005.

Summary

2. The proposed regulations will ensure that maintained and independent schools will be on an equal and similar regulatory position to those organisations involved in the provision of private and voluntary sector childcare.

Background

3. Childcare provided by maintained and independent schools is currently exempt from the national minimum quality requirements imposed on other childcare providers under the Children Act 1989.
4. In this situation young children are potentially at greater risk of harm because of the lack of formal or statutory quality controls over schools' childcare facilities. Furthermore, because of the lack of formal inspection they are able to operate outside of these controls (for example, with ratios of fewer adults to children), and they may be able to reduce costs and therefore unfairly undercut their competitors in the childcare market who are subject to regulation and inspection to meet Children Act requirements.
5. For children in non-school settings, the registration and inspection process is based on an assessment of compliance with the Child Minding and Day Care (Wales) Regulations 2002 and the corresponding National Minimum Standards for under 8s Day Care and Childminding. There are currently up to 23 Standards which childcare providers are required to meet. By lifting the current schools' exemptions, childcare facilities in independent and maintained schools would be required to meet the same standards.

6. Up until September 2003, the exemption had in practice only applied to independent schools, as the law did not allow maintained schools to run their own childcare provision unless such provision was part of the school's activities. However, by virtue of Section 27 of the Education Act 2002, governing bodies of maintained schools are themselves able to provide childcare facilities.

Consultation

7. Consultation on these regulations took place between 28th May 2004 and 23rd July 2004. The results of this consultation are summarised in the Annex to the Regulatory Appraisal. None of the responses received suggested amendment to the content of the proposed regulations.

The Regulations

8. Draft regulations (plus draft explanatory memorandum and regulatory appraisal which will be submitted to the Business Committee in November) are at Annex Bi, Annex Bii and Annex Bii;
 - Regulation 1 sets out the citation, commencement and application.
 - Regulation 2 sets out the interpretation.
 - Regulation 3 sets out the requirement to register day care in schools under Part XA of the Children Act 1989.
 - Regulation 4 sets out the transitional provisions for schools that commence operation as providers of day care before 31st January 2005.

Financial Implications

9. Costs arising from this instrument relate to the costs of the Care Standards Inspectorate for Wales (CSIW) in implementing the regulations. The costs for financial year 2004-05 have been taken into account in existing baselines. In 2004-05, there will a transfer from the Cymorth including childcare BEL of £113,400 to the Central Administration budget to fund the CSIW. The Finance Minister agreed this transfer and the Health and Social Services Committee were informed in accordance with Standing Order 19. The costs for future financial years will need to be considered within the budgets agreed by the Assembly.

Timetable for implementation

10. Following the Committee's consideration of the Regulations my intention is that they should proceed under the Standard Procedures to plenary.

Action

11. The Committee is invited:

- i. To scrutinise the draft regulations at Annex Bi in accordance with the Committee's agreed protocol for handling subordinate legislation;
- ii. To note the intention to proceed with the draft regulations under the standard procedure to plenary.

Jane Hutt
Minister for Health and Social Services

October 2004

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NATIONAL ASSEMBLY FOR WALES

S T A T U T O R Y I N S T R U M E N T S

2005 No. (W.)

SOCIAL CARE, WALES

**CHILDREN AND YOUNG
PERSONS, WALES**

**The Day Care (Application to
Schools) (Wales) Regulations 2005**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations require that all schools that were previously exempt from the requirement to do so must be registered under Part XA of the Children Act if they are providing day care for children aged under eight years old, the main purpose of which is to look after children other than in the course of providing them with education.

Schools that provide day care for the first time on or after 31 January 2005 must be registered as day care providers before they open for business.

For schools providing day care prior to 31 January 2005 and which continue to after that date the Regulations make transitional provisions. Under these transitional provisions such schools may continue to provide such care until 1 April 2005 and, if they apply for registration before that date may continue to do so after that date until the application is decided, or if the decision is appealed the appeal is determined or abandoned. Schools which fail to make such an application before 1 April 2005 will be committing an offence under section 79D(5) of the Act if they continue to provide day care after that date.

2005 No. (W.)

SOCIAL CARE, WALES

**CHILDREN AND YOUNG
PERSONS, WALES**

**The Day Care (Application to
Schools) (Wales) Regulations 2005**

Made 2005

Coming into force 31 January 2005

The National Assembly for Wales, in exercise of the powers conferred upon it by section 104 of, and paragraph 1(1) of Schedule 9A to, the Children Act 1989 (a) hereby makes the following Regulations:

Citation, commencement and application

1. —1) These Regulations are to be cited as the Day Care (Application to Schools) (Wales) Regulations 2005 and are to come into force on 31 January 2005.

(1) These Regulations apply only in relation to Wales.

Interpretation

1. —2) In these Regulations-

“the Act” (“*y Ddeddf*”) means the Children Act 1989;

“the National Assembly” (“*y Cynulliad Cenedlaethol*”) means the National Assembly for Wales.

(a) 1989 c.41. Functions of the Secretary of State under the Act are made exercisable by the National Assembly for Wales by virtue of the inclusion of the Act in Schedule 1 to the National Assembly for Wales (Transfer of Functions Order) 1999 (S.I. 1999/672) (see article 2(a) of the 1999 Order and section 22(1) of the Government of Wales Act 1998 (c. 38)). Schedule 9A to the Act was inserted by the Care Standards Act 2000 (c. 14), section 79 and Schedule 3.

Requirement to register day care in schools under Part XA

1. Subject to regulation 5, the circumstances prescribed for the purposes of paragraph 1 of Schedule 9A to the Act (exemption of certain schools) are those referred to in regulation 4.

2. The prescribed circumstances are that the main purpose for which the day care is provided is to look after children other than in the course of providing them with education.

Transitional provisions

1. If the day care to which regulation 4 applies was first provided at the school in question prior to the coming into force of these Regulations and continues to be so provided, regulations 3 and 4 will not apply to that day care (and therefore the provision of such day care without registration is not prohibited by section 79D(5) of the Act) until:-

- (a) if no completed application for registration under Part XA of the Act is made in relation to the provision of that day care at that school prior to the 1 April 2005, the 1 April 2005;
- (b) if such an application is made prior to 1 April 2005, the day on which the applicant is notified of the National Assembly's decision in relation to it;
- (c) if such an application is made prior to 1 April 2005, and the decision of the National Assembly in relation to it is that it be refused or be granted subject to conditions, not all of which have been agreed in writing between the applicant and the National Assembly, the expiry of 28 days from the date on which the applicant is notified of that decision;
- (d) if the applicant for registration appeals against a decision to which sub-paragraph (c) applies, the date on which the appeal is abandoned or, if not abandoned, the date on which the applicant is notified of the decision in relation to it;

whichever is the later.

Signed on behalf of the National Assembly under section 66(1) of the Government of Wales Act 1998(a)

Date

(a) 1998 c.38

The Presiding Officer of the National Assembly

To: Business Committee

From : Jane Hutt AM
Minister for Health and Social Services

EXPLANATORY MEMORANDUM

The Day Care (Application to Schools) (Wales) Regulations 2005

Summary:

These new regulations require that all schools must be registered under Part XA of the Children Act 1989 in respect of any day care (as defined in section 79A of the Children Act 1989) provided by them for children aged under eight years old.

Schools that will provide day care for the first time on or after 31st January 2005 must be registered as day care providers before they open for business.

Under transitional provisions, schools that commenced operation as day care providers before 31st January 2005 are required to apply for registration by 1st April 2005. As long as such existing providers make their application by 1st April 2005, they will not be treated as providing unregistered day care pending the determination of their applications.

1. This memorandum is submitted to the Assembly's Business Committee in relation to The Day Care (Application to Schools) (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 section 104 of, and paragraph 1 (1) 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 extend the requirements of Part XA of the Children Act 1989 to day care facilities provided directly by maintained and independent schools. The regulations apply to Wales only.
5. Childcare provided by maintained and independent schools is currently exempt from the national minimum quality requirements imposed on other childcare providers under the Children Act 1989.
6. In this situation young children are potentially at greater risk of harm because of the lack of formal or statutory quality controls over schools' childcare facilities. Furthermore, because of the lack of formal inspection they are able to operate outside these controls (for example, with ratios of fewer adults to children), they may be able to reduce costs, and therefore unfairly undercut their competitors in the childcare market who are subject to regulation and inspection to meet the Children Act requirements.
7. For children in non-school settings, the registration and inspection process is based on an assessment of compliance with The Child Minding and Day Care (Wales) Regulations 2002 and the corresponding National Minimum Standards for under 8s Day Care and Childminding. There are currently up to 23 Standards which childcare providers are required to meet. By lifting the current schools' exemptions, childcare facilities in independent and maintained schools would be required to meet the same standards.

Target Implementation:

9. It is intended that the proposed instrument be made on 18th January 2005, with a coming into force date of 31st January 2005, and a registration date of 1st April 2005 for all schools in Wales who wish to provide day care.
10. The regulations were originally to have been implemented this spring. We have been liaising closely with officials in England and the policy underpinning these regulations has only recently been finalised, with the consultation with schools and other interested parties in Wales concluding on 23rd July 2004.
11. The regulations pertaining to England came into effect on 1st September 2003, phasing in the regulation of day care in schools in England over a two year period:
 - For day care provided for the first time on or after the 1st September 2003, the registration date is *1st September 2004*;
 - For day care provided before 1st September 2003 which includes care for a child or children under the age of 2, the registration date is *1st September 2004*; and
 - For day care provided before 1st September 2003, solely for a child or children over the age of 2 or over, the registration date is *1st September 2005*.

Both England and Wales administrations have worked very closely together, but have adopted different policy requirements across the boundaries. England has opted to phase in the regulation of day care in schools over a two year period, starting with the under 2s age group having a registration date of 1st September 2004, and with day care solely for the age group 2+ having a registration date of 1st September 2005.

12. In Wales, we propose to phase in registration over a 3-month period, introducing a common registration date of 1st April 2005 for day care in schools across the age range 0-8 years.
13. The regulations are now required with some urgency. If these regulations are delayed, the Welsh Assembly Government could be accused of inequality of treatment whereby Children Act regulation is applied to private and voluntary sector nurseries but not to maintained and independent schools.

Financial Implications:

14. No additional costs will fall on schools and therefore local education authorities unless they choose to provide childcare, and there is no requirement to do so. Under guidance already issued (Community Focused Schools - National Assembly for Wales Circular No: 34/2003), schools have to adhere to the requirements of the regulations if they opt to provide childcare. For these reasons the regulations do not cause an additional burden on local authorities.
15. It remains indeterminate how the new power for maintained schools to provide childcare will be taken up and thus it is difficult to determine costs to the CSIW. Our planning assumptions are detailed in the attached Regulatory Appraisal.
16. There will obviously be costs to the CSIW arising from extra registration and inspection activity with regards to schools. A small proportion of those costs will be recovered from the childcare settings through registration and inspection fees, though these at present only apply to full day care. Therefore, in order to cover the costs to CSIW, in 2004-05 there will be a transfer from the Cymorth including childcare BEL of £113,400 to the Central Administration budget to fund the CSIW. The estimated cost to CSIW, net of registration and inspection fees, is estimated to increase to £253,400 in 2008-09. If sufficient specific provision is not made in the BPR for the increased costs for CSIW, the additional cost will need to be accommodated within the overall Health and Social Services MEG provision approved by the Assembly for subsequent transfer to the Central Administration MEG.
17. The Director of Health and Social Care Resources (ref.) and Financial Planning Division (ref.) have previously been consulted and have noted the additional financial implications for the Assembly arising from the implementation of this memorandum.

Regulatory Appraisal:

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

Consultation:

19. With Stakeholders:

These regulations have been subject to full publication consultation (between 28 May 2004 and 23 July 2004), with schools and other interested parties (as detailed in the Annex to the Regulatory Appraisal)

None of the responses were in disagreement with the regulations. Broadly, responses were positive and the regulations were seen by all as a major step in ensuring that:

- children using childcare facilities in schools are given the same level of protection as those in other childcare settings
- all settings operate on the same minimum quality level.

They were also perceived as a further advancement of the Assembly's commitment to give governing bodies of schools powers to provide services to help meet the needs of their wider community (Community Focused Schools - National Assembly for Wales Circular No: 34/2003 refers).

20. 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 are due to meet on 3rd November 2004 to scrutinise the regulations.

Recommended procedure:

21. 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:

22. 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).

23. 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.).

24. Drafting Lawyer: Amanda Jones, ext. 3873

Head of Division: Chris Burdett, ext. 3936

Policy Division contact: Angela Cheeseman, ext. 5736

October 2004

**JANE HUTT
MINISTER FOR HEALTH AND SOCIAL SERVICES**

**REGULATORY APPRAISAL –The Day Care (Application to Schools)
(Wales) Regulations 2005**

Purpose and intended effect of the measure

1. The draft regulations will only apply to schools where the **primary purpose** of childcare provision is “looking after” children (as defined in section 79A of the Children Act 1989). As such, educational provision for under 8s which takes place during the normal school day where care is not identified as the primary function, will not be required to be registered or inspected by the CSIW in accordance with Part XA of the Children Act 1989. In addition, other activities such as the supervision of homework after school; out of hours learning; choir practice; and drama clubs will not generally require registration.
2. The introduction of the proposed new regulations will ensure that maintained and independent schools will be on an equal and similar regulatory position to those organisation involved in the provision of private and voluntary sector nurseries.

Background

3. Childcare provided by maintained and independent schools is currently exempt from the national minimum quality requirements imposed on other childcare providers under the Children Act 1989.
4. In this situation young children are potentially at greater risk of harm because of the lack of formal or statutory quality controls over schools’ childcare facilities. Furthermore, because of the lack of formal inspection they are able to operate outside of these controls (for example, with ratios of fewer adults to children), and they may be able to reduce costs and therefore unfairly undercut their competitors in the childcare market who are subject to regulation and inspection to meet Children Act requirements.
5. For children in non-school settings, the registration and inspection process is based on an assessment of compliance with The Child Minding and Day Care (Wales) Regulations 2002 and the corresponding National Minimum Standards for under 8s Day Care and Childminding. There are currently up to 23 Standards which childcare providers are required to meet. By lifting the current schools’ exemptions, childcare facilities in independent and maintained schools would be required to meet the same standards.
6. Up until September 2003, the exemption had in practice only applied to independent schools, as the law did not allow maintained schools to run their own childcare provision unless

such provision was part of the school's activities. However, by virtue of Section 27 of the Education Act 2002, governing bodies of maintained schools are themselves able to provide childcare facilities.

Risk assessment

7. Since the introduction of childcare regulation under the Children Act 1989 the risk of harm to children being cared for in settings outside their own home has been reduced. Local authorities have developed standards, based on guidance under the Children Act, and although these have been variable, they have imposed a quality baseline for all providers. Even greater consistency in the minimum quality threshold has now been achieved as the responsibility for childcare regulation has been transferred from the 22 local authorities to CSMW, and The Child Minding and Day Care (Wales) Regulations 2002 and the corresponding National Minimum Standards are being applied in place of the local standards used previously.
8. Schools have previously been exempt from these requirements. The Welsh Assembly Government's objective is to ensure that children using childcare facilities in schools are given the same level of protection as those in other childcare settings and that all settings are operating on the basis of the same minimum quality level. It could be argued that the risk of children coming to harm is in any case lower in schools because their activities are monitored in other ways and such risks are managed as part of their normal business.
9. The current inequality of treatment whereby Children Act regulation is applied to private and voluntary sector nurseries but not to maintained and independent schools also brings with it the risk of unfair competition. Private/voluntary sector providers are concerned that schools not subject to the same level of regulation may be able to operate at lower costs, charging the consumer lower prices. This unfair competition could be such as to deter potential providers from entering the childcare market and to threaten the viability of existing providers. This, in turn, puts at risk the expansion that lies at the heart of the Welsh Assembly Government's childcare strategy and the achievement of Assembly targets for more childcare places. The Welsh Assembly Government's objective is to reduce this risk of unfair competition by making a more "level playing field" as far as regulation is concerned.

Options

10. We have looked carefully at the advantages and disadvantages of maintaining the status quo, i.e. continuing the exemption for schools from the Children Act arrangements for childcare regulation. However, in doing nothing we would maintain the current level of risk in terms of children's welfare and continue to give preferential treatment to schools in terms of the requirements of childcare regulation.

11. In view of this, we considered the following 2 options –

Option 1 Apply the National Minimum Standards and supporting criteria to schools without modification using the procedures and sanctions available under the Children Act;

Option 2 Apply the National Minimum Standards to schools, in a modified form that recognises their particular child-related business, but still using the procedures and sanctions available under the Children Act.

12. Option 2 would allow a degree of flexibility and sensitivity to the particular needs of schools. However, it would create an inconsistency of approach between childcare provided by the voluntary or private sector on the one hand and schools on the other. This would be contrary to the Assembly Government's policy to encourage a diversity of provision and equity between different sectors.

13. We therefore believe Option 1 is the best way forward.

Benefits

14. As indicated above, the objective of the proposed regulations is to produce a more equitable system so that all childcare providers are treated equally as far as the regulatory requirements are concerned. We recognise, however, that childcare providers range from self employed childminders operating on their own, to large nursery chains with considerable administrative and technical backup facilities. The varying nature of childcare provision is acknowledged both in the National Minimum Standards, where different criteria apply to different types of settings, and in CSIW's processes, so that, for example, the length of the inspection is proportionate to the size of establishment, the number of children being cared for and the length of time it is operating. As with other settings, CSIW will have discretion to ensure that regulation is proportionate.

15. The most significant benefits of the regulation of childcare facilities in schools would be the achievement and promotion of basic minimum standards for quality of care, and the consequent reduced risk of harm to young children. The sanctions that can currently be applied where quality of childcare is unacceptably low are limited. The Children Act arrangements would provide better protection for children. It is not possible to quantify this benefit in terms of reduced incidence and impact of harm caused to young children as there is no data available to compare incidence or risks before and after the Children Act was introduced.

16. A more "level playing field" would increase fair competition in the childcare market. This would potentially create more childcare

places, in accordance with Welsh Assembly Government targets for the expansion of the market, as new providers might be encouraged to set up childcare provision in areas they may not have otherwise considered. However, such increases may be counter-balanced by the fact that some independent schools may no longer wish to provide childcare. Fair competition will also create more choice for parents, particularly those who may be concerned about the quality of care in schools. Applying the National Minimum Standards without specific concessions for schools would guarantee minimum quality across the different types of childcare settings.

Costs

Independent Schools

17. Independent schools that are already meeting the majority of the National Minimum Standards will incur minimal costs in meeting the required minimum standards. However, it must be acknowledged that some schools will incur costs in meeting some of the standards, in particular, staff ratios, qualifications and space requirements, although this would be a sign that their provision was of unacceptably low quality.
18. Higher costs may lead to the closure of provision or costs being passed on to parents. We have considered this risk and take the view that a more competitive environment will, in the longer term, encourage more providers into the market because they will have a fairer environment in which to operate. In addition, cost should not compromise the safety and well-being of children.
19. The main focus for the Welsh Assembly Government's expansion objectives is disadvantaged areas, where any adverse impact on independent school provision would have a minimal effect. Independent schools are less likely to be operating in such areas where, typically, the voluntary and public sectors play a greater role.

Maintained schools

20. Governing bodies of maintained schools have only themselves been able to provide childcare facilities since September 2003 and the Community Focused Schools National Assembly for Wales Circular No: 34/2003 issued on 15th December 2003 advised schools planning to set up such provision to take account of the National Minimum Standards. The community focused schools guidance deals specifically with some of the standards which imply costs, for example, space requirements, staff ratios and qualifications. As such, it is envisaged that the total policy costs for maintained schools would be minimal.

Competition Assessment

Competition Filter

21. There are 62 independent schools in Wales and 1924 maintained schools in Wales, of which 1724 are nursery, infants or primary.
22. It is accepted that some of the costs of the proposed regulation will affect a number of schools, particularly those in the independent sector, substantially more than others. The factors that will influence costs will include the existing standards of unregulated day care provision; type of day care provision; and the size of the individual schools involved.
23. One of the aims of the proposed regulations is to provide a more 'level playing field' for existing and potential organisations seeking to deliver a high quality childcare service which will contribute to the Welsh Assembly Government's targets for expansion of childcare places.
24. It is also accepted that regulation could lead to higher set up costs for some schools wishing to provide childcare in the future, however this will bring parity between schools and other potential organisations wishing to set up childcare provision.

Small Firm Impact Test

25. Most childcare providers would be classed as small businesses. Although there is a danger of a small number of independent schools closing provision, it is felt that the proposed regulation would bring equality and consistency across settings, and equity between the statutory school settings and small businesses.

Consultation

26. These regulations were tested in full public consultation between 28 May 2004 and 23 July 2004. Over 500 copies of the consultation document were distributed (a copy of the distribution list is attached as an Annex to the Regulatory Appraisal). None of the 17 consultation responses were in disagreement with the regulations. A summary of the responses is attached as an Annex to the Regulatory Appraisal.

Significant Costs

27. There will be costs to CSIW arising from extra registration and inspection activity with regards to schools.
28. A small proportion of those costs will be recovered from the childcare settings through registration and inspection fees, though these at present only apply to full day care.

29. Our planning assumptions are based on a number of factors:

- There are currently 62 independent schools in Wales and 1924 maintained schools in Wales (of which 1724 are nursery, infants or primary).
- Clybiau Plant Cymru Kids' Clubs identified 523 school based childcare clubs already registered with CSIW, and 32 schools where it is known an application to CSIW will be made once these regulations are in place.
- In considering the impact on CSIW costs of the regulations, we need to estimate the marginal addition to the flow of registrations caused by schools having the new power. The availability of start up funds is a crucial factor in whether new provision is offered.
- At the same time, schools will have the advantage that management will be in the hands of the existing governing body, rather than relying on seeking volunteers for a new management committee.
- The likely impact was discussed at a meeting of representatives of the childcare organisations, and the consensus is that the impact of the new power will be marginal in the absence of new funding for childcare.

30. With these factors in mind, we made the following working assumptions:

- In 2004-5, we estimate 50% of the independent schools will register childcare provision and 50 maintained nursery, infants or primary schools – 81 schools.
- In 2005-6, the remaining independent schools will register childcare provision and the rate of registration within maintained schools will then continue at 50 schools per annum. The first inspections will take place within 2005-6.
- On this basis, we estimate that within five years, a total of 312 schools across both sectors may register childcare provision, above the registration of new out of school clubs that would have occurred without the new regulations.

CSIW unit costs

31. The CSIW have produced unit costs of:

- £700 per setting for the year round business of inspection, reporting, complaint investigation and enforcement, once settings are registered. The matching annual fee to the provider is £95. However, this applies only to settings providing full day care – that is care for a continuous period of four hours or more in any day. If schools opt to provide only wrap-around care in the form of breakfast and after school clubs, there will be no fee. Nor will there be a fee if they provide only sessional care for pre-school children. And if they provide full day care – but do so only in the school holidays – again there will be no annual fee. At most, we consider only half of these settings would pay the fee.

- Experience suggests that the one-off business of registration will be twice as time consuming as the year-in-year-out involvement, once registration has taken place. This would give us a costing of £1400 per registration. The matching registration fee to the provider is £125, but again this would not be payable for wrap-around care, sessional care or holiday provision. Again, we assume that only half of the applications would pay the fee.

32. On the basis of our assumptions:

- In the first year registration would cost CSIW 81 schools x £1,400, a total of £113,400.
- In the second year again, registration would cost CSIW 81 schools x £1,400, a total of £113,400. CSIW would also have the first year's inspection etc. costs across the board, which would cost 81 schools x £700, or £56,700.
- In the third and subsequent years, registration would cost CSIW 50 schools x £1,400, a total of £70,000. Each year, the previous registrations would be added to the inspection workload. So in year 3 this would cost CSIW 162 schools x £700 (£113,400), in year 4 this would cost 212 schools x £700 (£148,400) and in year 5 this would cost 262 schools x £700 (£183,400).

33. On this basis and assuming no turnover, our best estimates of the total cost to the CSIW for registration and inspection for each of the first five years would be:

Year	Registration	Inspection	Total
1	£113,400	£0	£113,400
2	£113,400	£56,700	£170,100
3	£70,000	£113,400	£183,400
4	£70,000	£148,400	£218,400
5	£70,000	£183,400	£253,400

Review

34. Regulation of childcare under the Children Act 1989 carries with it an effective enforcement regime, administered by the CSIW. Measures range from agreed action plans for improvement to legal proceedings in serious cases, for example where children are at immediate risk of harm.

35. The Child Minding and Day Care (Wales) Regulations 2002 and the corresponding National Minimum Standards for childcare were issued in April 2002. Arrangements will be subject to regular and

continuing review based on the information collected by CSIW in the course of its regulatory activity and other evidence.

Summary

36. The Welsh Assembly Government is keen to ensure that there are proper safeguards for children being cared for in schools. This is now more pertinent in light of the new power given to governing bodies of maintained schools in the Education Act 2002 that enables them to provide childcare facilities for the wider community. In addition, we are also seeking to provide a high quality childcare service. As such, we are proposing to lift current exemption of schools from the regulatory requirements of Part XA of the Children Act 1989.
37. It is recognised that these proposals may have an impact on some independent schools whose provision is considerably different from the requirements of The Child Minding and Day Care (Wales) Regulations 2002 and the corresponding National Minimum Standards. The proposed regulations will only apply to those maintained schools that wish to take advantage of the new powers given to governing bodies under the Education Act 2002 to provide childcare facilities themselves.
38. It is therefore recommended that agreement in principle is given to these regulations being introduced for the reasons outlined above.

Day Care (Application to Schools) (Wales) Regulations 2004

Distribution List for document consulting on the contents of proposed regulations governing the provision of childcare in maintained and independent schools:

Head teacher and governing bodies of maintained and independent schools in Wales; local education authorities; teaching and other unions; Governors Wales; diocesan authorities and voluntary organisations in the childcare sector; Children and Young People's Partnerships; Children's Partnerships; Early Years Development and Childcare Partnerships; New Opportunities Fund.

Note:

The consultation document was distributed to

- All 62 independent schools in Wales;
- 10% of maintained schools in Wales (this is the agreed % distribution for consulting with schools);
- 22 x local education authorities, Children and Young People's Partnerships, Children's Partnerships and Early Years Development and Childcare Partnerships;
- 13 x Teaching and other unions;
- 11 x Diocesan authorities;
- 11 x Voluntary organisations in the childcare sector;
- Governors Wales;
- New Opportunities Fund.

HSS(2)-13-04(p3 Annex C - annex 1)

Responses to consultation – “Day Care (Application to Schools) (Wales) Regulations”

LA/Org	Date	Comments
Association of Teachers and Lecturers – Committee in Wales	06/07/04	Agrees with Assembly’s preference for option 1.
Treffos Independent Preparatory School, Anglesey	07/06/04	Supports standardised regulations for all childcare providers. Timetable reasonable, but concern expressed that schools would find it difficult to recruit appropriately qualified staff – have these implications been considered? Some providers might have difficulty in meeting the correct adult-child ratios within the timescale. Concern was also expressed that the figure of 50 schools (pg. 5) was far too low, and that most headteachers would wish to register, leading to a significant flood of applications.
National Union of Teachers – Wales	12/07/04	Welcomes the proposals and the common sense approach towards the timescale. The provision of childcare, however, should never undermine the fact that the primary purpose of a school is to provide education. In particular, it should not affect the provision/expansion of education for ages 3-5. Child care is viewed as beneficial for staff returning after maternity leave, as well as for some pupils who have given birth whilst still at school, and who would face less disruption to their education where childcare is available. It also would provide useful work experience opportunities for those following childcare modules at secondary schools.
Flintshire Children’s Services	23/07/04	Content that all providers be treated the same, and that the quality of provision would improve. Content also with the timetable. Option 1 preferred, as this would create a level playing field. Suggested that there would be additional costs for training and development needs of staff in meeting CSIW requirements.
Carmarthenshire Children’s Partnership	13/07/04	Very happy with the approach to the regulation of childcare in schools. Also content with the timetable. Option 1 preferred as this would create a level playing field.

		<i>Regarding additional costs, it is asked whether insurance would be through the LEA or a private company as in existing non-maintained childcare settings? Also, would the payroll be LA or would schools/governors register with the Inland Revenue and operate the system? It is noted that the standards are minimum and that settings should strive towards a quality assurance award.</i>
Alway Primary School, Newport	09/07/04	Content with both the approach and the timetable. Scenario 1 viewed as most likely, as cost of quality childcare will create demand quickly.
Caerphilly LEA	21/07/04	Content with the approach as schools offering childcare should be subject to the minimum quality requirements imposed on other providers. Also, the timetable for registering existing provision in the maintained sector is appropriate. Falling school rolls and additional funding for support staff will mean that many schools will have the capacity to offer registered childcare provision. With the move to p/t education for 3 year olds, many schools will be keen to offer wrap around care, particularly in rural schools, Welsh Medium sector, and denominational schools. It is noted that there would be additional costs for training, and it is also suggested that other registered providers may not be able to compete with schools and may close.
Pembrokeshire LEA	21/07/04	Schools in Pembrokeshire are already registered with CSIW, and it is welcomed that this will now apply across Wales. The timetable is seen as appropriate. Option 1 is deemed the most appropriate, and it is also seen as appropriate that independent schools should be under the same regulations as other schools and providers.
National Childminding Association (Voluntary Organisation)	21/07/04	Happy with the approach to the regulation of childcare provided by schools. All childcare should be subject to quality control. Also approves of the timetable for the implementation process. Agrees that option 1 is the most appropriate; it is important that NMS are applied equally and fairly to all childcare settings. Modifying these standards to one particular childcare provider would hamper the achievement of a climate of fair competition within the childcare market. Bringing schools up to the NMS would have a significant cost attached to it, which would apply to all schools intending to offer childcare services. It is suggested that guidance be made available to parents in order to enable them to

		<p>understand the differences between the different types of childcare available, and to make informed choices on the best option for them.</p> <p>Schools that do not have the space to accommodate childcare provision may benefit from working in partnership with a 'children come first' childminding network. This creates a diversity of local provision and strengthens the school's relationship with the community and those who care for local children.</p>
ContinYou Cymru (Voluntary Organisation)	22/07/04	<p>The approach of the regulations is welcomed. Schools will need support in making applications and developing new provision so that they are not disadvantaged in any way in relation to provision provided outside a school setting. The timetable is viewed as challenging, and it is hoped that there would be some flexibility where schools may need support in making their application. Some concern is expressed that the process of registration might be viewed as over complex by schools who may choose not to offer such provision, which would be negative for the community. Where the development of community focussed schools is promoted, it will be essential to provide sound information on the provision of childcare.</p>
Nant-y-Cwm Steiner School, Clunderwen (Independent)	22/07/03	<p>Content with both the approach and the suggested timetable. It is felt that there would be increased provision due to expanding opportunity in the maintained sector, but independent school provision would not be lessened as such schools would embrace the opportunity to become part of a well regulated system to the benefit of all childcare providers. No additional costs are foreseen.</p>
NAHT Cymru (Teacher Union)	23/07/04	<p>Content with the timetable, and welcomes common standards for all providers. No firm view on the numbers of schools likely to offer provision, but believe that the greater proportion at least in the first phase will be in more affluent areas. Care needs to be taken to ensure that disadvantaged areas benefit equally.</p> <p>Additional costs may be incurred in terms of building maintenance, additional payments to those with overall responsibility for provision, and additional payment for duties currently undertaken by a school caretaker.</p> <p>Greater clarity is requested in terms of the inspection of the provision and the</p>

		<p>relationship between Estyn and CSIW in schools. Schools must be made aware that they are under no compulsion to offer provision of this kind. When new heads are appointed to a school, it is considered important that they be allowed to revisit previous decisions to make provision of this kind in the school.</p> <p>Lines of accountability and responsibility must be absolutely clear to avoid an increase in the workload of headteachers in particular.</p>
ISCIS, Abergavenny	23/07/04	<p>Content with both the approach and the timetable.</p> <p>Comments based on 16 independent schools who are members of ISC; Non ISC schools may be put off by yet more inspections (yearly?) Therefore, a 50% take up may be too optimistic.</p> <p>No additional costs are foreseen.</p> <p>Regulation of day care is seen as essential, and an initial inspection vital. After that, a light touch approach with regular, unannounced visits by CSIW.</p>
Howell's School, Llandaff	23/07/04	<p>Perfectly happy with the approach, but timing may be a little tight in that access to training courses may be a problem as most start in September. A slightly extended deadline would be helpful.</p> <p>Additional costs identified are staff training costs, and the ongoing costs of re-registration and compliance.</p> <p>It is commented that there is no mention of the use of pupil volunteers or parent helpers. Regulations that are too restrictive may put these off. Also, a definition of the school day would be helpful – are we assuming that it is only 7 hours between 08:00 – 16:00?</p> <p>Finally, it would be helpful if the inspection of day care provision could be undertaken at the same time as the school inspection and the early years inspection.</p>
Newport Children and Young People's Framework	23/07/04	<p>Content with the approach but concerned that CSIW would be unable to meet the demand for inspections of existing provision.</p> <p>There should be consistency and therefore it would be inappropriate for standards to be modified for schools.</p> <p>Regarding additional costs, there would be a possible impact on buildings (space</p>

		<p>requirements), recruitment and retention of staff, and an impact on current providers (CPCKC).</p> <p>It is hoped that schools wishing to register will work closely with Clybiau Plant Cymru and the Partnership to ensure that needs are met appropriately.</p> <p>The impact on existing groups must be carefully monitored. In the most deprived areas parents may still need financial support to access provision. Parental involvement must be maintained.</p>
Monmouthshire County Council	23/07/04	<p>The document is ambiguous and there are too many anomalies such as the differences between education and childcare and different ages at which they apply. All childcare should be registered, whatever the setting.</p> <p>The timescales are too tight, more time being required for new providers (suggest Jan 2005). Existing provision may have problems funding appropriately qualified staff by November 2004. Will existing providers be given time to train or will the existing deadlines of 2008 still stand?</p> <p>Unable to comment on independent schools except to question where these regulations affect children over statutory school age. Regarding maintained schools, given that many settings are already registered, it would seem likely that there is an underestimation of the number of existing settings that will need to register.</p> <p>Additional costs will be incurred for training, supply cover, staff ratios, and payment for qualified staff. There will also be capital costs for improvement to facilities and spatial requirements. Other costs include longer hours worked by staff to formulate and produce documentation for CSIW plus the cost of development work.</p> <p>Page 5, paragraph 2a, is not clear, ie. Phased regulations of day care in school in England over a 2 year period, starting with under 2's. Does it imply schools will be able to take younger pupils for the purpose of day care?</p>
Cardiff LEA	23/07/04	<p>Content with both the approach and the timetable.</p> <p>Option 1 preferred as all schools should be subject to the same standards and sanctions as other day care providers.</p> <p>Possible additional costs identified where schools may need to alter their premises</p>

		<p>following CSIW recommendations - fire officer for instance, and emergency exits, lighting, heating/hot water.</p> <p>It is further commented that no consideration has been given to schools who provide day care in the form of breakfast or lunch clubs and operate for less than 2 hours.</p> <p>Whilst the primary purpose is childcare, it continues to go unregulated and places very young children at risk.</p>
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