



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

ADRODDIAD GAN Y PWYLLGOR DEDDFAU

LEGISLATION COMMITTEE REPORT

The Child Minding and Day Care (Wales) Regulations 2002 SI 812 (W.92)

These regulations contain requirements with regard to the conduct of child minder and day care activities.

Standing Order 11.5

The following points have been drawn to the attention of the Minister under SO 11.4. The Minister has responded in a letter of 9 May 2002, a copy of which is annexed to this report.

Regulation 4(1) and (2)

It was queried whether the circumstances referred to in paragraph (2) are intended to be the sole circumstances in which a person is not to be regarded as “suitable” under paragraph (1). Note was taken of the more specific wording in regulation 16(2) –

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

The further question was posed as to whether, if regulation 4(2) is not intended to encompass all circumstances under which a person may not be “suitable” under paragraph (1), is the Minister content that regulation 4(1) provides a sufficiently precise basis for a provision in relation to which non compliance is a criminal offence under regulation 24?

It is apparent from the Minister’s response that notwithstanding the different wording used, no different principle of application is intended between regulations 4(2) and 16(2). Additionally, the Minister submits that certainty of application in relation to the prohibition in

regulation 4(1) can be achieved by reference to the criteria in, and applied by, regulation 4(2).

Having had regard to the Minister's response, it is accepted that any inconsistency of format between regulations 4(2) and 16(2) does not amount to defective drafting. Accordingly, the Assembly is merely invited to pay special attention to regulation 4 on the ground that its form and meaning has needed the further explanation which has now been provided.

Regulation 12(c)

This requires "unnecessary risks" to be eliminated "so far as possible". The question was thus raised that if a risk is "unnecessary", should it not always be possible to eliminate it?

The Minister explains that the purpose of this provision is to require providers to undertake risk assessment, but accepts that the wording might benefit from reconsideration in the light of experience.

Again, the Assembly is merely invited to pay special attention to this provision as having needed the further explanation which has now been given.

Regulation 13(2)

The query was raised as to how this provision is "subject to" paragraph (3) given that paragraph (3) appears merely to provide a definition for the purposes of paragraph (2).

The Minister submits that paragraph (2) is "subject to" paragraph (3) in the sense that paragraph (3) gives a specific meaning to "prescribed", but accepts that the wording could probably have been omitted.

Again, the Assembly is merely invited to pay special attention to this provision as having needed the explanation which has now been given.

Regulation 18

Paragraph (1)(b) requires every entry in the records to be preserved for three years from the date on which the last entry was made. It was queried whether this is intended to mean that the records must be maintained for three years from the date of the last entry

whatever the nature of that entry. The further question was raised that if this was so, since entries would presumably continue to be made during the time that the registered person was carrying on the activities in question, would it not have been clearer to include the requirement in paragraph (3) so that the records are required to be maintained for three years from the date when the registered person ceases to act as a child minder or to provide day care?

The Minister explains that the effect of regulation 18(1)(b) is to ensure that records, whatever the nature of the entries, always go back at least three years. Regulation 18(3) is a separate requirement which ensures that such records, as existing when the registered person ceases to act as a child minder or to provide day care, are then maintained without time limit.

The Committee is grateful for this explanation and accepts that the provision can be seen to have this effect. Accordingly, there are no points in arising in relation to this provision to which the Assembly needs to be invited to pay special attention.

Regulation 21(1)

It was pointed out that there appeared to be a discrepancy between the two texts as “in relation to relevant premises” has not been included in the Welsh text.

The Minister accepts that there is a minor discrepancy between the two texts and indicates that this has been noted for amendment when a suitable opportunity arises.

The Assembly is accordingly invited to pay special attention to this inconsistency, but it is accepted that it can be left until a suitable amendment opportunity arises.

Schedule 3

It was queried whether there was any significance in the fact that whilst paragraphs 2 and 3 specifically require a “home address”, paragraphs 1 and 4 do not refer to a “home” address.

The Minister explains that “home address” does not appear in paragraph 1 as the registered person could be a corporate body. With regard to paragraph 4 the Minister

concedes that “home address” could have been included although its exclusion is not considered to affect the operation of the paragraph.

It appears that in drafting these provisions specific attention has not been directed to the desirability of achieving consistency in the use of the term in question. Inclusion of “home address” in paragraph 4 would have been logical. Additionally, since the home address is clearly going to be relevant in many cases covered by paragraph 1, a reference in that paragraph would have maintained consistency, possibly coupled with a “where appropriate” limitation in respect of the “registered person” reference.

It is not considered appropriate to categorise this as defective drafting, however, and thus the Assembly is merely invited to pay special attention to this provision as having needed the further explanation which has now been provided.

General Observations

Regulation 4(4)

Footnote (a) states that sections 113 and 115 have “not yet” been brought into force. Since this statement may be overtaken by events, however, it would have been more satisfactory for the footnote to indicate that those sections had not been brought into force at the time of making the regulations.

Regulation 5(2)

The first “as the case may be” does not appear to be necessary.

Regulation 7(1)(b)

“driniaeth” should be “triniaeth”.

Mick Bates AM
Chair, Legislation Committee

21 May 2002

Jane Hutt AM
Minister for Health and Social Services



Llywodraeth Cynulliad Cymru
 Welsh Assembly Government

Cardiff Bay
 Cardiff
 CF99 1NA

Our ref: JH/01267/02

Mr Mick Bates AM
 Chair, Legislation Committee
 The National Assembly for Wales
 Cardiff Bay
 CF99 1NA

9 May 2002

Dear Mick,

**THE CHILD MINDING AND DAY CARE (WALES) REGULATIONS 2002 NO. 812(W.92)
 (LC459)**

I refer to your letter of 23 April 2002 in connection with the draft report of the Legislation Committee. Comments on the matters raised are as set out below:-

Regulation 4(1) and (2):- the intention behind the drafting of the provisions was to provide that no-one should be a childminder or day care provider unless suitable to look after children under the age of eight. It is acknowledged that regulation 16(2), which sets out the circumstances in which workers are unsuitable, refers back specifically to regulation 16(1) in terms ("for the purposes of paragraph (1)") and that regulation 4(2) does not contain such a specific reference back although it does use the formulation - "A person is not so suitable ..." which, in the context, clearly refers back to regulation 4(1). In any event, in practice it would be the intention that the Care Standards Inspectorate for Wales would rely on the criteria set out in regulation 4(2) in considering the suitability of a person or body and that the regulation can in the circumstances be enforced with sufficient certainty. It should be noted that Regulation 4 refers to the suitability of persons to be registered, while Regulation 16 refers to the suitability of persons to look after children, for example as staff of the registered person. Regulation 4 as amplified by the provisions of Schedule 2 is considered to provide a sufficiently precise and comprehensive basis for creating the offence.



BUDDSODDWR MEWN POBL
 INVESTOR IN PEOPLE

Regulation 12 (c) – It is accepted that the description of risks in this context might benefit from reconsideration in the light of experience. This paragraph is necessary and worthwhile because it creates an onus on providers to undertake risk assessment.

Regulation 13(2) – sub-paragraph (2) is “subject to paragraph (3)” in so far as the definition of “prescribed” in paragraph (3) limits the requirements relating to administration of medicines in paragraph (2)(b) to those which are prescribed as defined in paragraph (3). It is accepted that the provision would arguably have worked equally well without using “subject to paragraph (3)”.

Regulation 18 – the committee queries the provision requiring entries in records maintained by a registered child minder or day care provider to be preserved for 3 years from the date the last entry was made. The effect of this is to ensure that records, whatever the nature of the entries, always go back at least 3 years. Paragraph (3) relates to the specific circumstances where a registered person ceases to act in that capacity. When that occurs the intention is that the records existing at that date are kept securely and made available for inspection. There is no time limit set in relation to that requirement.

Regulation 21(1) – the minor discrepancy between the English and Welsh texts is noted. This is appropriate for amendment to ensure that the Welsh mirrors the English, when a suitable opportunity arises.

Schedule 3 – The words “home address” are not used in paragraph 1 as a registered person could be a corporate body in the case of a day care provider. The expression could have been used in paragraph 4 but the requirement as it stands is considered to be workable.

The general observations in the report are noted.

Tom,

Jane