



Llywodraeth Cymru
Welsh Government

The Child Minding and Day Care Exceptions (Wales) Order 2010

Call for Evidence – Summary of Key
Findings Report

August 2019

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INTRODUCTION

Purpose

1. The purpose of the call for evidence was to seek views on The Child Minding and Day Care Exceptions (Wales) Order 2010¹ (“the Order”), which sets out exceptions to what constitutes “child minding” or “day care for children” for the purposes of Part 2 of the Children and Families (Wales) Measure 2010. Stakeholders were invited to provide comments on Articles 3 and 6 of Part 2 of the Order relating to child minding and Articles 13 and 15 of Part 3 of the Order relating to day care.
2. The call for evidence reports its findings to the Deputy Minister for Health and Social Services following the commitment made by the former Minister for Children, Older People and Social Care to review this order to help inform future policy decisions regarding the Order.
3. The 12 week call for evidence ran from 20 December 2018 to 20 March 2019.

Next Steps

4. The Deputy Minister for Health and Social Service has agreed to take steps to provide more information to parents regarding the difference between registered and unregistered childcare provision. The *Choosing Childcare* booklet produced by the Welsh Government and disseminated through Family Information Services will be refreshed with a view to raising awareness amongst parents of some of these differences. The Deputy Minister will also aim to issue a full consultation on the Order before the end of 2020.

¹ S.I. 2010/2339 (W. 233).

BACKGROUND

Care Inspectorate Wales

5. Child minding, day care and play provision for children up to 12 years of age is regulated by Care Inspectorate Wales (CIW) on behalf of the Welsh Ministers.
6. This applies where registration is required under Part 2 of the Children and Families (Wales) Measure 2010² (“the Measure”) as amended by the Regulation of Child Minding and Day Care (Wales) Order 2016³.
7. Regulated childcare falls into two categories; child minding and day care.

The Child Minding and Day Care Exceptions (Wales) Order 2010

8. Section 19(2) and (3) of the Measure respectively define “child minding” and “day care for children”). Sections 21 and 23 of the Measure require, respectively, a child minder and a provider of day care for children to register with the Welsh Ministers (CIW). Section 19(4) and (5) of the Measure confers power on the Welsh Ministers to specify circumstances in which a person whose activity would otherwise fall within one or other of the definitions is excepted from it and who is not therefore required to register.
9. The powers in section 19 of the Measure were exercised in the making of the Child Minding and Day Care Exceptions (Wales) Order 2010 (“the Order”), which sets out exceptions to what constitutes “child minding” or “day care for children” for the purposes of Part 2 of the Regulations. A full list of the exceptions in the Order are detailed at Annex B

Child Minding

10. Section 19(2) of the Measure defines a “child minder” as ‘*a person who looks after a child under the age of 12 on domestic premises for reward*’.
11. Section 21 of the Measure requires anyone who proposes to act as a child minder to be registered with the Welsh Ministers (CIW) unless the circumstances in which the person looks after a child falls within one of the exceptions described in articles 3 to 7 of the Order in which the person is not considered to be acting as a “child minder” for the purposes of the Measure and is not therefore required to register with the Welsh Ministers.

² 2010 nawm 01.

³ S.I. 2016/98 (W. 47).

Day Care

12. Section 19(3) of the Measure defines a “day care provider” as ‘*a person who provides day care for children up to the age of 12 if at any time the children are cared for on non-domestic premises*’.
13. Section 23 of the Measure requires anyone who proposes to provide day care for children to be registered with the Welsh Ministers (CIW) unless the circumstances in which the person provides day care falls within one of the exceptions described in articles 9 to 16 of the Order in which the person is not considered to be acting as a provider of “day care for children” for the purposes of the Measure and is not therefore required to register with the Welsh Ministers.

CALL FOR EVIDENCE

Summary of consultation responses

14. A full 12 week call for evidence on the Order 2010 took place between 20 December 2018 and 20 March 2019.
15. The call for evidence was issued electronically to a wide range of stakeholders including relevant Welsh Government policy officials, those with an interest in child minding and day care, particularly organisations in the child minding and day care sector, local authorities, child minding and day care providers, and parents. A full list is provided at **Annex A**. The call for evidence was also made available on the Welsh Government website. All those consulted were, to varying degrees, stakeholders in the childcare sector.
16. Responses to the call for evidence were received from the following categories:
 - **Local Authorities**
 - **Day Care Providers**
 - **Child Minders**
 - **Charitable Organisations supporting Childcare/Early Years/Play/Nurseries/School Clubs**
 - **Churches Together in Wales**
 - **Private Primary Education Provider**
 - **Future Generations Commissioner for Wales**
 - **Public Service Bodies**
17. A total of 20 responses were received. Some of the responses were a collation of sector-specific stakeholder comments and not all of the respondents commented on every question that was posed in the call for evidence document. Furthermore, some respondents did not provide direct 'yes' or 'no' answers to each question. In these circumstances, every effort has been made to interpret and include the respondent's intended viewpoint in the figures quoted in this summary.

18. All quotations from consultation responses are in the original language unless specified otherwise.

Key issues identified from responses received to the Call for Evidence

19. A number of concerns and issues were raised by respondents in their responses to the call for evidence. These can be summarised as follows:

Child minders

- An amendment is required to Article 3 of the Order, relating to child minding, to bring the Article in line with recent policy developments regarding registered childminders caring for related children, as set out in paragraph 24;
- Respondents requested clarity around the definition of the term 'relative';

Day Care

- Clarity is required regarding Article 13. Respondents have raised concerns regarding safeguarding and have also expressed general confusion around whether or not this article relates to hotel/guest house baby-sitting services only;
- Article 15 has enabled some out of school and holiday activity settings to operate without registering with CIW despite their primary purpose being to provide childcare. For some, this raises significant concerns regarding safeguarding;
- Parents providing day care can access childcare funding in respect of their own children if the childcare is provided outside of the child's home but child minders are not eligible to receive the Offer for their own child if they care for them at home. Some see this as unfair;

Child minding and day care

- Some respondents were unclear as to the rationale behind the 'two hour rule' in both child minding and day care and where the balance lies between proportionate registration and safeguarding.

Child Minding

Scope of the call for evidence

20. Views were sought from those who would be affected by any changes made to the Order, or those who have a particular interest in the areas of child minding to assist the Welsh Government in making informed policy decisions in respect of any proposed changes to the Order.

21. The call for evidence focused on articles 3 and 6 of Part 2 of the Order relating to child minders.
22. **Part 2** of the Order relates to child minding, and article 2 states '*a person who looks after a child under the age of 12 on domestic premises for reward does not act as a child minder for the purposes of Part 2 of the Regulations in the circumstances described in articles 3 to 7 of the Order.*
23. As set out in the call for evidence questions at pages 8 to 10, views were sought regarding article 3 of Part 2 of the Order which states a child minder is not required to be registered where they are a child minder to a child to whom they are related and article 6 of Part 2 of the Order which states a person does not act as a child minder where the person only begins to look after the child in the period between 6pm on any one day and finishes looking after the child by 2am the following day.
24. Through the early implementation of the Childcare Offer, the Welsh Government was made aware of a potential issue where registered child minders who were caring for children to whom they are related, were not considered to be acting as a child minder as a consequence of the wording of the Order and therefore could not be funded by the Offer.
25. In June 2018, the then Minister for Children, Older People & Social Care wrote to Assembly Members to inform them of a change in policy regarding child minders accessing funding under the Childcare Offer for children who were relatives. This came as a result of feedback from the sector and from parents expressing their concerns about child minders being unable to receive funding under the Offer for the care of a relative. Consequently, the policy around funding child minders to provide care for a relative was reviewed, drawing on evidence from the sector and weighing up the pros and cons of any changes.
26. Guidance for the Early Implementation of the Childcare Offer was amended to include child minders who are caring for a relative. These changes took effect from September 2018, to coincide with the expansion of the rollout of the Offer. The guidance sets out that child minders who are caring for a relative are eligible to access funding through the Offer - as long as they are registered with CIW and the care is provided outside of the child's own home.
27. Article 6 of the Order excludes childminders from the requirement to register if they provide care between the hours of 6pm and 2am only. They are therefore ineligible for funding under the Offer in these circumstances. We were keen to understand views on this potential issue.

Article 3

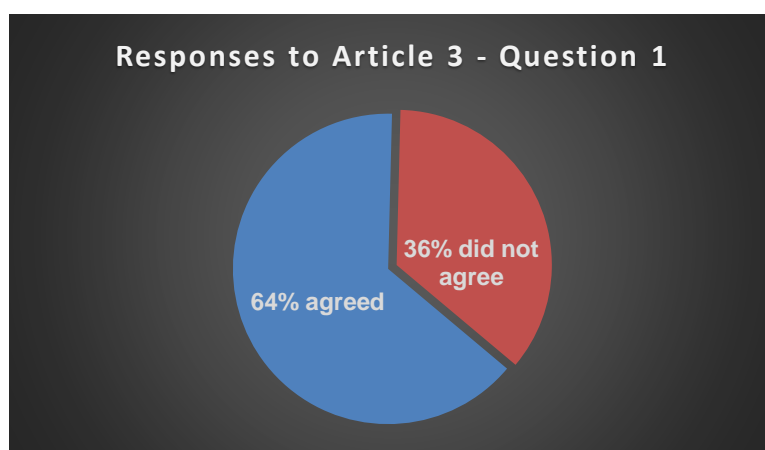
- (1) *A person looking after a child does not act as a child minder if that person—
 - (i) is a parent, or a relative of the child; or,
 - (ii) is a foster parent for the child.*

- (2) *In this article “foster parent” (“rhiant maeth”) includes a person with whom a child has been placed by a local authority or by a voluntary organisation or a person who fosters a child privately.*

Summary of responses to Article 3

Question 1: Do you believe this article needs amending?

28. There were 14 responses to this question. Of the 14 responses, 5 (36%) did not believe the article needed amending and 9 (64%) thought the article did need amending.



29. Respondents who did not believe the article needed amending stated the article was appropriate as it is.
30. A number of respondents believed the article needed to be updated to reflect Welsh Government’s current policy position regarding registered childcare providers providing care for relatives as set out in the updated Childcare Offer Guidance for Early Implementer Local Authorities⁴ which was issued in September 2018. The guidance states that ‘*registered child minders are able to deliver the Childcare Offer for a child who is also a relative, providing that care is delivered outside of the child’s home*’. The Childcare Offer guidance was amended to ensure that registered child minders who are caring for children who are relatives can be considered a child minder insofar as this is required to participate in the Offer.
31. The majority of respondents agreed that it should be possible for a relative to be considered as a registered child minder for children they are related to as long as the child care they provide is not at the related child’s address, and that the child

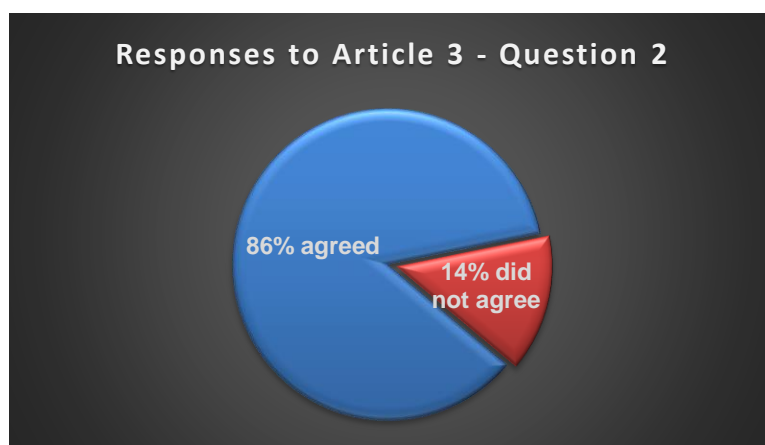
⁴ Childcare Offer Guidance for Early Implementer Local Authorities September 2018
<https://gweddill.gov.wales/docs/dsjlg/publications/cyp/180702-early-implementer-september-2018-en.pdf>

minder is operating an open door policy child minding business, which includes children they are not related to.

32. A few respondents felt it should be possible for a parent to be considered a child minder in respect of care provided for their child in the child's home as the 'ban' on related children in Wales is unique to childminders. As individuals working in or owning a nursery or pre-school are permitted to claim funding under the Offer for related children, including their own children, it was felt that there was a lack of parity across the sector.
33. A few respondents stated that it should not be compulsory for family members to be registered as child minders to be able to provide child care when providing care for a relative if they were not being financially rewarded for it.
34. Social Care Wales commented they would like to see Independent Fostering agencies included in the definition of 'foster parent' at Part 2 of the Order for consistency as the Order already includes placements via local authorities, voluntary organisations and those who foster privately.
35. Respondents also commented that clear guidance on what is meant by the term 'relative' is needed.

Question 2: Do you believe that someone is acting as a child minder if they are a registered provider caring for children, including children to whom they may be related

36. There were 14 responses received to this question. Of the 14 responses, 2 (14%) did not agree with the definition of a child minder, as described in question 2, and 12 (86%) thought the definition was correct.

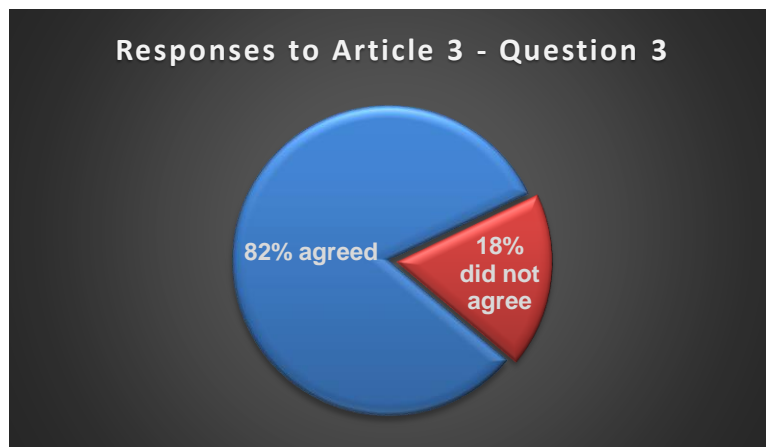


37. The respondents who did not agree with the definition of a child minder at question 2 did not provide any additional comments on this.

- 38. Those respondents who agreed with the definition of child minder at question 2, stipulated that a child minder *must* care for children other than their own or those to whom they were related to be considered a child minder, and therefore an eligible provider to receive public funds. They should not only provide care for their own child or a child to whom they are related.
- 39. In their response to this question, Ceredigion County Council stated they agreed with the description at question 2 as long as the related children were included within the ratio and the child minder follows the legal process e.g. having contracts, invoicing etc. The child minder treats their relatives as any other child within their care. If the relative is their own child and the care is provided within their own home they may not be considered as that child's child minder.

Question 3: If yes to above, do you believe there should be any restrictions put in place around this?

- 40. There were 11 responses received to this question. Of the 11 responses, 2 (18%) did not believe there should be any restrictions to the definition of a child minder at question 2 and 9 (82%) thought restrictions should be put in place.



- 41. Of the respondents that did not believe restrictions should be added, they stated that as long as providers adhered to the relevant current regulations and policies regarding overall ratios then this should be sufficient.
- 42. The respondents that agreed restrictions should be added to the definition of child minder at question 2, stated a registered provider should not be able to claim public money for childcare relating to their own child, but they should be able to provide childcare for their own child in a business setting where they are also providing child care for children not related to them and more specifically, the child minding they provide should not be at the home address of the child.
- 43. A response from one local authority agreed that there should be restrictions attached to the article, and suggested the wording could be amended to say that parents, foster parents and relatives (with a clear definition for 'relative of the child')

are able to choose whether or not they register to become a child minder. If they were registered as a child minder they would not be acting as child minders for their own children but they would for other people's children and would therefore not be able to claim from schemes such as the Childcare Offer or tax free childcare for the care they provide to their own children.

44. In their response to this question PACEY Cymru agreed the article should be amended to reflect Welsh Government's amended policy position, and suggested the following restrictions should be added to the article:

Article 3

A person looking after a child does not act as a child minder if that person–
(i) is a parent, or a relative who has parental responsibility for the child
(ii) is a foster parent for the child.
(iii) is a relative registered as a child minder at the same residential address as the child

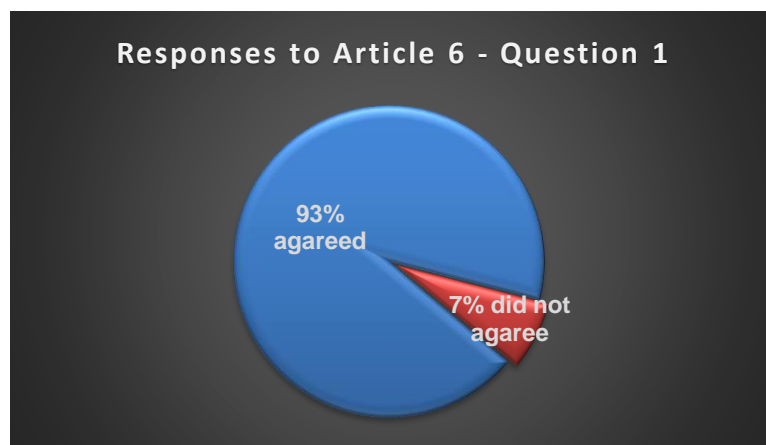
45. PACEY Cymru states they believe there are already sufficient safeguards in place to ensure the Welsh Government would not be 'paying parents to parent' if this change was made to the order.

Article 6

A person does not act as a child minder where the person only begins to look after the child in the period between 6pm on any one day and finishes looking after the child by 2am the following day.

Question 1: Do you believe this clause should be amended?

46. There were 14 responses received to this question. Of the 14 responses, 1 (7%) did not believe the article needed amending and 13 (93%) thought the article did need amending.



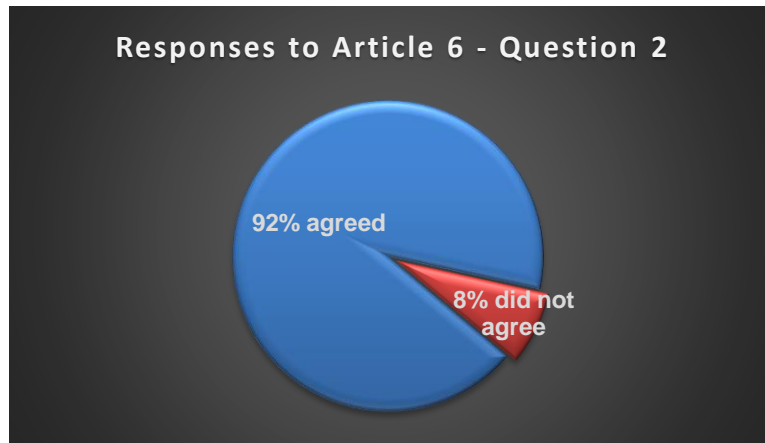
47. The respondent that did not believe the article needed amending stated child minders usually operate during the day only.
48. Respondents generally agreed that this article should be amended so that persons providing child minding services in the evenings/nights (therefore providing a valuable service in terms of meeting the childcare needs of parents working evening/night shifts) should be able to register as child minders. This, in turn, would mean that the parents of the children being cared for in such circumstances would be able to access Tax Free Childcare and the Childcare Offer. It was also felt that it would be important to stipulate that this child minding would have to take place outside of the child's home so as to distinguish between child minding and babysitting. A respondent made the point that, not only would amending this article allow parents to access public funding for childcare, it would also help ensure that safeguarding is made a priority as any child minder looking after a child at the child minder's address would consequently need to be regulated and inspected.
49. Early Years Wales agreed this article requires amending to allow child minders to register to provide child care between 6 pm and 2 am for parents working night time shifts, but that this should be on the condition that the childcare must not take place in the child's home address. They believe this would address the fact that child care is child care whenever it is provided.
50. A number of local authorities agreed that this article needed amending, some of the comments received in response to the call for evidence included:

“Yes - a person acts as a child minder regardless of the time of day they are providing their services. It needs to be made clear that this relates to care provided by child minders in their own homes”.

“There is a need to provide more flexible childcare therefore child minders will have a choice in how they operate their provision, this will allow testing of the market. Being able to operate as a registered child minder will allow parents who may work shifts, late nights or weekends to access funding to support childcare costs. If care during these hours exceeds the 1hour 59 minute rule then yes there should be registration in place”.

Question 2: Do you believe that child minders should (or would want to) provide a service solely operating after 6 pm.

51. There were 13 responses received to this question. Of the 13 responses, 1 (8%) did not agree with question 2 and 12 (92%) did agree with question 2.



52. The respondent that did not agree with question 2 did not provide any further comments on this.
53. A majority of respondents agreed that child minders should be able to (or may want to) provide a service solely operating after 6 pm. They agreed that child minders would need to be registered to provide childcare after 6 pm, and this would also benefit those parents who work evening/night shifts as it would allow them to access public funds such as the Childcare Offer.
54. In their response to this question, Caerphilly County Council stated that:
- “With the increasing number of workers accessing shift work, it may well be that parents require childcare during the evening. There should be an option for these parents to access safe, registered childcare provided by registered providers. If a child minder is registered for evening care only this should be suitable for such a purpose”.***
55. A number of local authorities expressed the view that child minders may want to provide a service solely after 6 pm, if there was a business need and demand for this provision and that this would benefit shift workers, emergency services etc. They also agreed that this service would need to be registered to allow parents to access financial support via the Childcare offer, Tax Free Childcare, Working Tax credits, Universal Credit, etc. If parents were not able to access registered child minders it may leave them financially disadvantaged compared to parents who work more standard hours, who have greater and easier access to registered childcare provision.
56. In their response to this question, PACEY Cymru stated that they believe there should be opportunities for innovative models of delivery to support child minder sustainability and growth and parental choice by removing barriers to promoting flexible ways of working to meet parental demand around atypical hours.

Day Care

Scope of the call for evidence

57. The Welsh Government sought the views of those who would be affected by any changes made to the Order, or those who have a particular interest in the areas of day care to assist in making informed policy decisions in terms of the future direction of travel.
58. The call for evidence focused on articles 13 and 15 of Part 3 of the Order relating to day care.
59. Article 8 of the Order states '*A person who provides care for children under the age of 12 on premises other than domestic premises is not providing day care for the purposes of the 2010 Measure in the circumstances set out in articles 9 to 15*'.
60. As set out in the call for evidence questions at pages 8 to 10, views were invited regarding article 13 of Part 3 of the Order which relates to day care being provided at a hotel, guest house or other similar establishment for a child staying in that establishment and article 15 of Part 3 of the Order relating to coaching or tuition provided at day care and the types of activities included.
61. As hotels, guest houses and other similar establishments are sometimes used to temporarily house families, the Welsh Government was interested in gauging whether any changes needed to be made to article 13 to reflect this. The Welsh Government is also aware that in some instances article 15 of the Order is enabling some out of school and holiday activity settings to operate without registering with Care Inspectorate Wales despite their primary purpose being to provide childcare provision. Views were invited on this issue also.
62. The call for evidence focussed on these particular articles of the Order as it had been identified these areas may benefit from being updated to ensure they meet current needs, to allow the childcare sector to operate as efficiently as possible whilst also providing the best framework for safeguarding children.

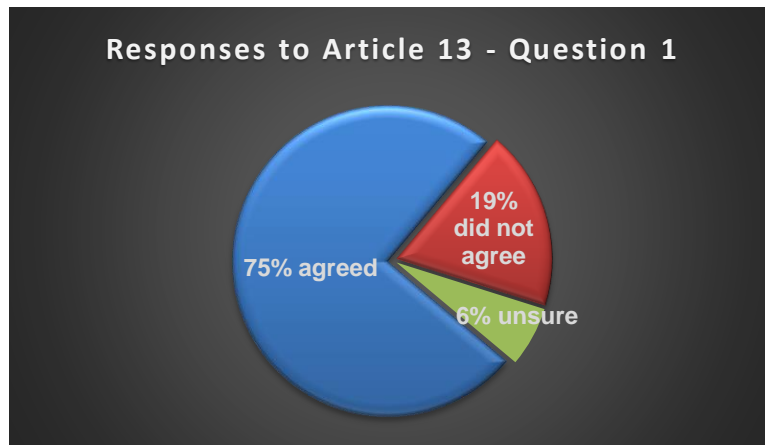
Article 13

- (1) *A person does not provide day care where the care is provided at a hotel, guest house or other similar establishment for a child staying in that establishment where—
 - (a) the provision only takes place between 6 pm and 2 am; and
 - (b) the person or, as the case may be, any individual employed by the person, who is providing the care is doing so for no more than two different clients at the same time.*
- (2) *For the purposes of sub-paragraph (1)(b), a “client” is a person at whose request (or persons at whose joint request) care is provided for a child*

Summary of responses to Article 13

Question 1: Do you believe there is a need to amend this article? and **Question 2:** If so, why?

63. There were 16 responses received to question 1. Of the 16 responses, 3 (19%) did not believe the article needed amending and 12 (75%) thought the article did need amending, and 1 (6%) didn't know.



64. The respondents that agreed this article should be amended generally agreed this was due to safeguarding issues but there was also some confusion around whether this article is only aimed at a hotel/guest house baby-sitting service.

“Yes – it is really confusing – is it referring to a baby-sitting service or ad hoc childcare? I believe that childcare that operates for more than 2 hours would need to be registered – consistency with other childcare regulations. If a day care is required to register then so should a childcare service at a hotel or guest house, otherwise this could be unsafe for the children attending. Why are they any different to a childcare provider who operates during typical office hours? Safeguarding of children should be paramount. In a hotel - if the care is for one family in their hotel room between the hours of 6 pm and 2 am it would be classed as more of a babysitting service, whereas if the children are in group based provision away from the parents room then it would be childcare and ratio and registration apply. A baby sitting service should still be registered and staff should be properly recruited”.

“Yes, these establishments listed need to understand the duty around safeguarding. It needs to be clear that staff with responsibility for the care of children have undergone an Enhanced DBS and hold appropriate qualifications e.g. First Aid, Safeguarding (Child Protection) etc. to look after children staying at the establishment. The definition of ‘staying’ is not the same as temporarily ‘living’ at the address, more clarity is needed as to what they mean”.

65. In their response to this question Flintshire County Council agreed this article needed amending to make it clear whether this article was referring to a baby-sitting service or an in-house crèche facility. They state that if the article is intended for a baby-sitting service, then the exceptions as they are, would be suitable but if the exception also relates to a crèche at the premises, where there would be a number of children attending, then such a crèche facility should be subject to regulations.
66. The 1 (6%) response received that was unsure whether this article needed amending stated they were unaware of any examples of this type of provision, but that if parents have no choice but to access childcare in this way, if the provision is not registered then the parents cannot access financial support with these childcare costs.

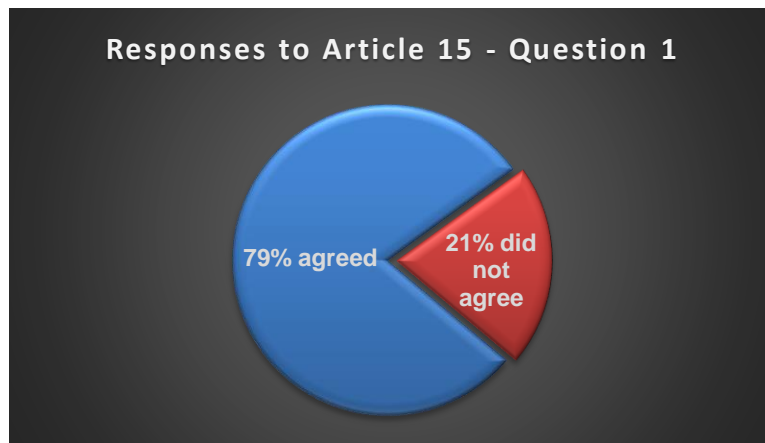
Article 15

- (1) Subject to paragraph (2), a person does not provide day care where the person provides coaching or tuition in an activity of a type listed in paragraph (3) and any care provided to them is incidental to the provision of that coaching or tuition.*
- (2) The exception in this article does not apply if —*
- (a) the children are below the age of 5 and attend for longer than four hours per day; or,*
 - (b) the person offers coaching or tuition in more than two of the types of activity listed in paragraph (3).*
- (3) The types of activity are —*
- (a) sport;*
 - (b) performing arts;*
 - (c) arts and crafts;*
 - (d) school study or homework support;*
 - (e) religious or cultural study*

Summary of responses to Article 15

Question 1: Do you believe this clause should be amended? And **question 2:** If so how? For instance do you believe amendments should be made to the activities listed? Do you believe we need to be more specific about the definition of coaching or tuition?

67. There were 19 responses received to question 1. Of the 19 responses, 4 (21%) did not believe the article needed amending and 15 (79%) thought the article did need amending.



68. Those respondents who did not believe the article needed amending included a response from a local authority which stated that if such activities were required to register as childcare, it would severely restrict the opportunities for children to access these experiences.
69. A majority of the respondents who believed this article needed amending were concerned that this exception was being utilised by childcare providers so that they did not have to register to provide childcare. They are able to do this by stating their day care or after school club provides '*coaching or tuition in more than two of the types of activities*', as listed at paragraph (3) of the article. A large number of respondents are concerned that there are safeguarding issues attached to this article as it allows for unregulated childcare to take place for children over the age of 5 for up to 4 hours a day.
70. There were also a number of respondents who stated that paragraph (2)(b) of the article needed to be amended as currently there is too much room for interpretation. In their response to this question, Ceredigion County Council suggested the word 'setting' should be included in paragraph (2)(b) so that the exception reads 'if the setting offers coaching or tuition in more than two types of activity'. They also state that if the types of activity are run consecutively, and the child remains at the setting for one or more of the activities then they should register e.g. a homework club followed by sports club at the same premises should register as an after school club – especially if the child remains at the setting for the duration of each activity, and over two hours per day on a regular basis.
71. In their response to this question Early Years Wales state there is a need for greater clarity around the definition of 'coaching and tuition' to ensure such activities are not inadvertently used as a substitute for regulated childcare provision. They believe a number of such settings are currently operating and it is questionable where the borderline is between "coaching/tuition" and childcare.
72. Explore Learning, in their response to this question, stated they believe that the activities detailed and day care are not mutually exclusive as Explore Learning offers tuition to 4-18 years olds, caring for their safety and physical, mental and emotional wellbeing, as part of the care they provide. They state the standards and level of care they provide would apply to all ages and for any length of stay as a

child may be just as likely to be safeguarded or need medical needs tended to when with us for an hour, not just over 4 hours.

73. There was also concern expressed by respondents regarding the increase in non-regulated daycare being provided at lower rates which undermined regulated childcare provision. Clybiau Plant Cymru Kids' Clubs confirms it encourages and supports all clubs to remain open, CIW registered and sustainable throughout the school holidays, offering quality registered Out of School Childcare. However, the impact of unregistered provision is proving detrimental to this. They further state that increasing numbers of unregistered Holiday Activity Clubs running in the school holidays, with lower fees than registered childcare, is leading to fewer registered Holiday Childcare Clubs running due to competition and parents' perceived value for money. Since April 2015 the number of registered Holiday Clubs has dropped from 438 (12,674 places) to 416 (December 2018) registered Holiday Clubs (11,665 places), a reduction of over 1000 childcare places. With the introduction of financial schemes such as Tax Free Childcare and the Childcare Offer, it is surprising that they are not seeing a rise in the number of Holiday Clubs. Within these 416 Holiday Clubs, they state that a number are typically not opening, or have drastically reduced their opening days/hours, in many cases due to families utilizing unregulated alternatives as childcare.
74. A few respondents confirmed they would not want to see over regulation of activity clubs that would impact on the provision of sports clubs / theatre clubs etc, where there was only one activity provided. They believe organisations that run these types of activities have well-regulated procedures to run as specialist activities e.g. sports coaches have DBS and other qualifications etc. to ensure child safeguarding.

Summary of comments received on additional Articles of the Order

75. The call for evidence centered on Articles 3 and 6 of Part 2 of the Order and Articles 13 and of Part 3 of the Order but stakeholders were also invited to provide their comments on any other Articles in the Order they believed required amending.
76. Of the 20 who responded to the call for evidence, 7 also provided comments on Article 4 of Part 2 of the order relating to child minding and Articles 9 and 10 relating to day care.

Article 4

A person does not act as a child minder where the period, or the total of the periods, in any one day in which the person looks after children does not exceed two hours.

Summary of comments on article 4

77. PACEY Cymru believes that article 4 of the Order requires review in light of the way it is currently being used to provide unregistered child minding. They would argue that any provision that occurs for reward, whether for under two hours or over,

should fall under the definition of a child minder and be registered, regulated and inspected. They state they are aware of child minding provision that has continued to run even after de-registration or suspension by CIW by using the 'two hour rule' as a loop hole and providing care for 1 hour 59 minutes. PACEY Cymru do not believe this is in the best interest of children and families and potentially places children at risk.

78. PACEY Cymru state they understand the need for a balanced and proportionate approach but believe the welfare of the child should be paramount. PACEY Cymru understand that this article may need to be looked at in conjunction with Article 10 of the Order, however a child minder who works alone and unregistered is potentially a higher risk category.
79. Early Years Wales state they have found strong support for the removal of the exception that allows child minding and childcare services to be delivered free from regulation if the service is not delivered for more than two hours in a day. Because of this exception, it is also impossible for childcare services who can only operate for less than two hours a day, to become registered and regulated.

Article 9

A person does not provide day care where the care is provided by that person on the premises in question on fewer than 6 days in any calendar year and the person has notified the Welsh Ministers in writing before the first occasion on which the premises concerned are used in that year.

Summary of comments on article 9

80. Cytûn – Churches Together in Wales state a number of local churches who have arranged occasional holiday clubs and similar activities have not been aware of the requirement to give notice before the first use of their premises each year, even if the club runs for fewer than 6 days per year. They believe that this requirement needs either to be removed, or publicised more widely, in order to avoid unintended breaches of the law.

Article 10

A person does not provide day care where the period or the total of the periods in any one day on which children are cared for on premises does not exceed two hours.

Summary of comments on article 10

81. Ceredigion County Council state that, due to the current exemptions under Article 10 and Article 15 (2) (b) of Part 3 of the Order, out of school care is being delivered on a regular basis on school premises, without registering as after school clubs.

82. They believe that if the setting operates as one of the 'specified categories' then there should not be a cap on the minimum of hours e.g. under 2 hours and that the option should not be given between registering and non-registering.
83. If the child stays on the premises – or at premises arranged by the school - for any time after official 'school end' then this should be considered as 'after school care provision' – as this provision is paid for by parents and is not funded by education. As previously noted any provision held at a school even for under the two hours should be registered.
84. Flintshire County Council state that, regardless of how many hours of childcare is being delivered, a setting should endeavor to become registered in order to ensure robust safeguarding procedures and sound governance. For those settings that are operating under two hours there may be scope for introducing a less time consuming registration procedure in order to ensure the safety of children whilst also encouraging the setting to provide a quality service underpinned by regulations.
85. Play Wales believe that past consultations with the play work sector have demonstrated that most providers feel that the use of the two-hour exception should be closed; similarly the six days per year exception. However, this sentiment has always been expressed with the caveat that significant work was needed to establish a more safeguarding focused, lighter touch, proportionate approach to regulation and inspection. The focus of such an approach should be founded on principles of staff suitability (not necessarily qualifications) and the safeguarding of children attending the setting rather than quality assurance which is arguably the remit of governing bodies and national organisations. It should be noted that the consequences of the recent extension of the upper age range of regulation from 7 to 12 have yet to be fully understood, particularly in respect of junior youth clubs and the voluntary youth work sector.
86. Social Care Wales believe the "under two hour" exemption has been exploited by some groups looking to avoid registration. For childcare provision this should be re-evaluated. There is a difficulty here with play provision and if amendments were made to the "under two hour rule", proportionality would need careful consideration. There would also be resource implications for relevant inspectorates.

CONCLUSIONS

Child Minding

87. The findings of the call for evidence in relation to articles 3, 4 and 6 of the Order (relating to “child minding”) can be summarised as follows.

Article 3

- (1) *A person looking after a child does not act as a child minder if that person—
(i) is a parent, or a relative of the child; or,
(ii) is a foster parent for the child.*
- (2) *In this article “foster parent” (“rhiant maeth”) includes a person with whom a child has been placed by a local authority or by a voluntary organisation or a person who fosters a child privately.*

88. The intention of this exception was to allow parents and relatives to provide childcare in respect of children to whom they were related without the requirement to be registered as a child minder. In the early days of the Childcare Offer, it was brought to the Welsh Government’s attention that this had the unintended consequence of excluding registered child minders from receiving public funding for the provision of childcare in respect of children to whom they were related.

89. An overwhelming amount of respondents to this call for evidence acknowledge and agree with the amendment Welsh Government has already made in regard to this article to allow registered child minders to provide care for related children, as long as that care is not provided at that child’s home address. This change in policy position was communicated to stakeholders in the amended Childcare Offer Guidance for Early Implementer Local Authorities which was issued in September 2018, but the Order itself has not yet been updated to reflect this policy change.

90. A number of respondents requested clarification on the term ‘relative’. Currently, the Order describes a ‘relative’ as *“grandparent, brother, sister, uncle or aunt (whether of the full blood or the half blood or by marriage or civil partnership) or step parent”*.

91. A majority of respondents agreed with the current restriction on registered child minders not being considered a child minder, and therefore able to access public funds, in respect of their own child.

Article 4

A person does not act as a child minder where the period, or the total of the periods, in any one day in which the person looks after children does not exceed two hours.

92. This exception was included in the Order as, at the time, it was viewed as disproportionate for child care to register provision operating for less than 2 hours.

93. Comments received on this exception demonstrate that the childcare sector is strongly against the inclusion of this exception in the Order. They believe that it is intentionally being used as a 'loop hole' to provide unregistered childcare which could potentially put children at risk. Respondents acknowledge the need for a balanced and proportionate approach to childcare provision but overwhelmingly agree that this exception raises unacceptable levels of safeguarding issues for children.

Article 6

A person does not act as a child minder where the person only begins to look after the child in the period between 6 pm on any one day and finishes looking after the child by 2 am the following day.

94. This exception recognises that baby sitters are likely to provide childcare between the hours of 6 pm and 2 am, and we would not expect baby sitters to register as a child minder to be able to provide this service.
95. Unfortunately, this exception has had the unintended consequence of excluding child minders from registering to provide childcare solely between these hours and of preventing parents from claiming Government funding to help with childcare costs in these circumstances.
96. There was strong agreement from respondents that this exception should be amended so that a child minder, who chooses to provide a childcare service solely between the hours of 6 pm and 2 am, can register to do so.
97. Not only would amending this article allow parents who work evenings/night shifts, to access public funding for childcare, many respondents also argue that it would also help ensure that safeguarding is made a priority as any child minder looking after a child at the child minder's address should be regulated and inspected.

Day Care

98. The findings of the call for evidence in relation to articles 9, 10, 13 and 15 of the Order (relating to "day care") can be summarised as follows.

Article 9

A person does not provide day care where the care is provided by that person on the premises in question on fewer than 6 days in any calendar year and the person has notified the Welsh Ministers in writing before the first occasion on which the premises concerned are used in that year.

99. This exception was included in the Order as, at the time, it was considered disproportionate for a day care provider to be registered if this provision was operating for less than 6 days a year.

100. Cytûn – Churches Together in Wales were the only respondent to provide comments on this exception. They have responded on behalf of churches in Wales who arrange occasional holiday clubs and similar activities. They believe that this exception should either be removed, or publicised more widely, in order to avoid unintended breaches of the law.

Article 10

A person does not provide day care where the period or the total of the periods in any one day on which children are cared for on premises does not exceed two hours.

101. This article is similar to article 4 of part 2 of the Order which refers to child minders. Therefore the position as set out at paragraphs 95 to 96 is also relevant to article 10.

Article 13

(1) A person does not provide day care where the care is provided at a hotel, guest house or other similar establishment for a child staying in that establishment where—

(a) the provision only takes place between 6 pm and 2 am; and

(b) the person or, as the case may be, any individual employed by the person, who is providing the care is doing so for no more than two different clients at the same time.

(2) For the purposes of sub-paragraph (1)(b), a “client” is a person at whose request (or persons at whose joint request) care is provided for a child

102. The intention of this exception was to exempt the hours of 6pm to 2am and therefore meet the needs of parents who use the services of babysitters at overnight accommodation such as guest houses or hotels.

103. The majority of respondents who agreed this article should be amended generally agreed this was due to safeguarding issues but there was also some confusion around whether this article is only aimed at a hotel/guest house baby-sitting services and does not apply to situations where children are being cared for in a group-based provision away from the parent’s room.

Article 15

(1) Subject to paragraph (2), a person does not provide day care where the person provides coaching or tuition in an activity of a type listed in paragraph (3) and any care provided to them is incidental to the provision of that coaching or tuition.

(2) The exception in this article does not apply if —

(a) the children are below the age of 5 and attend for longer than four hours per day; or,

(b) the person offers coaching or tuition in more than two of the types of activity listed in paragraph (3).

(3) The types of activity are —

(a) sport;

(b) performing arts;

(c) arts and crafts;

(d) school study or homework support;

(e) religious or cultural study

104. The intention of this exception is to allow settings providing coaching or tuition in a sporting or cultural activity, on non-domestic premises, where the primary purpose of any sporting or cultural provision is to provide coaching or tuition, and any care provided is incidental to this, to be exempt from registration.
105. It was considered disproportionate to impose the burden of the childcare regulatory framework on such provision, where childcare is purely incidental to its main purpose. There was considered to be a separation between dedicated coaching/tuition, and provision that is essentially childcare-based, and therefore they should be treated differently for regulatory purposes.
106. A majority of those who provided comments during the call for evidence expressed concern that this exception was being used by providers to avoid registering to provide childcare. They are able to do this by stating their day care or after school club provides ‘coaching or tuition in more than two of the types of activities’, as listed at paragraph 3 of the article. A large number of respondents are concerned that there are safeguarding issues associated with this article as it allows for unregulated childcare to take place for children over the age of 5 for up to 4 hours a day.
107. It is worth noting in this context that guidance on the safeguarding and protection of children has been clearly established by the Welsh Government in *Safeguarding Children: Working Together Under the Children Act 2004*. This sets out the roles and responsibilities of local agencies to safeguard and promote the welfare of children, and applies to all services provided to them, regardless of whether such provision is subject to regulation within the scope of the Child Minding and Day Care Regulations or otherwise. Therefore, for provision that is excepted from regulation according to the provisions of the Child Minding and Day Care Exceptions (Wales) Order 2010, the welfare of children must still be safeguarded (as outlined within the *Working Together* guidance), and would not in any way be compromised by so being excepted. The exception merely recognises that it is not appropriate to regulate, as formal childcare, every type of childcare provision, or provision that happens to provide an element of childcare within its remit.
108. In light of the conclusions reached in paragraphs 87 to 107, recommendations on proposed next steps have been developed and are set out at paragraph 4 of this document.

LIST OF STAKEHOLDERS

- Children in Wales
- Welsh Local Government Association
- Professional Association for Childcare and Early Years (PACEY Cymru)
- Care Inspectorate Wales
- Local Authorities
- Children's Commissioner for Wales
- Social Care Wales
- Mudiad Meithrin
- Menter Caerffili
- Welsh Language Commissioner
- Early Years Wales
- Clybiau Plant Cymru Kids' Clubs
- Estyn
- Play Wales
- National Day Nurseries Association
- All Wales Flying Start
- Family Information Services
- Future Generations Commissioner

The Child Minding and Day Care Exceptions (Wales) Order 2010

Child minding, day care and play provision for children up to 12 years of age is regulated by Care Inspectorate Wales (CIW), on behalf of the Welsh Ministers.

Child minders and day care providers are required to be registered as set out under Part 2 of the Children and Families (Wales) Measure 2010 as amended by the Regulation of Child Minding and Day Care (Wales) Order 2016, unless they are exempt from this registration by meeting an exception in the Child Minding and Day Care Exceptions (Wales) Order 2010 ('the Order'). The exceptions relating to child minding and day care are summarised below:

Child minding

Part 2

Article 3

(1) A person looking after a child does not act as a child minder if that person —

- (i) is a parent, or a relative of the child; or,
- (ii) is a foster parent for the child.

(2) In this article “foster parent” (“rhiant maeth”) includes a person with whom a child has been placed by a local authority or by a voluntary organisation or a person who fosters a child privately.

Article 4

A person does not act as a child minder where the period, or the total of the periods, in any one day in which the person looks after children does not exceed two hours.

Article 5

(1) A person who is employed —

- (a) (i) to look after a child or sibling group for parents (“the first parents”), or
 - (ii) to look after a second child or sibling group for parents (“the second parents”) in addition to the children looked after for the first parents, and
 - (b) who looks after the children concerned wholly or mainly in the first or second parents’ own home or homes,
- does not act as a child minder.

(2) In this article—

- (a) “employed” (“cael ei gyflogi”) means employed either under a contract of employment or under a contract for services;

- (b) “parent” (“rhiant”) includes a person who is a relative of the child;
- (c) “sibling group” (“grŵp o sibliŷiaid”) includes half-brothers and half-sisters.

Article 6

A person does not act as a child minder where the person only begins to look after the child in the period between 6pm on any one day and finishes looking after the child by 2am the following day.

Article 7

A person does not act as a child minder where the person looks after a child or children in the course of friendship with the parents of that child or children and where no payment is made for the service.

- (2) In this article “payment” (“taliad”) means a payment of money or money’s worth but does not include the provision of goods or services.

Day care

Part 3

Article 9

A person does not provide day care where the care is provided by that person on the premises in question on fewer than 6 days in any calendar year and the person has notified the Welsh Ministers in writing before the first occasion on which the premises concerned are used in that year.

Article 10

A person does not provide day care where the period or the total of the periods in any one day on which children are cared for on premises does not exceed two hours.

Article 11

A person does not provide day care where the care is provided to a child cared for in a children’s home in respect of which a person is registered under Part 2 of the Care Standards Act 2000.

Article 12

A person does not provide day care where the care is provided to a child accommodated in—

- (a) a care home,
- (b) a hospital as a patient,
- (c) a residential family centre, or

as part of the activity of the establishment in question, whether by the provider of the establishment directly or by a person employed on the provider’s behalf.

Article 13

(1) A person does not provide day care where the care is provided at a hotel, guest house or other similar establishment for a child staying in that establishment where—

- (a) the provision only takes place between 6 pm and 2 am; and
- (b) the person or, as the case may be, any individual employed by the person, who is providing the care is doing so for no more than two different clients at the same time.

(2) For the purposes of sub-paragraph (1)(b), a “client” is a person at whose request (or persons at whose joint request) care is provided for a child.

Article 14

(1) A person does not provide day care where care is provided to children at a school and the provision of care is incidental to the provision of education.

(2) In this article “school” (“ysgol”) means—

- (i) a maintained school within the meaning of section 39 of the Education Act 2002(1);
- (ii) an independent school; or
- (iii) a school approved by the Welsh Ministers under s.342 of the Education Act 1996(2) (approval of non-maintained special schools).

Article 15

(1) Subject to paragraph (2), a person does not provide day care where the person provides coaching or tuition in an activity of a type listed in paragraph (3) and any care provided to them is incidental to the provision of that coaching or tuition.

(2) The exception in this article does not apply if —

- (a) the children are below the age of 5 and attend for longer than four hours per day; or,
- (b) the person offers coaching or tuition in more than two of the types of activity listed in paragraph (3).

(3) The types of activity are —

- (a) sport;
- (b) performing arts;
- (c) arts and crafts;
- (d) school study or homework support;
- (e) religious or cultural study.