

# CHILDREN AND FAMILIES (WALES) MEASURE 2010 Registration Guidance

A large decorative graphic on the left side of the page. It features a large blue circle that overlaps with a smaller green circle. To the right of the green circle is a white circle, which in turn overlaps with another green circle. The circles are arranged in a horizontal line, with the blue circle being the largest and the white circle being the smallest.

January 2020

ae'r ddogfen yma hefyd ar gael yn  
Gymraeg. This document is also  
available in Welsh.

# Contents

Introduction	4
Which services need to be registered?	6
Provider types	8
Making an application	12
Assessing an application	15
Disqualification from registration	18
Applying for a waiver	18
Withdrawing an application before determination	19
Registration decisions	20
Conditions of registration and Variations	21
Annex 1 – Glossary of Terms	23
Annex 2 – Definitions of Regulated Childcare	26
Annex 3 – CIW's Approach to Charitable Incorporated Organisations (CIO)	29
Annex 4 – Where Childcare and Play Services are provided on school premises	32
Annex 5 – Registered Person/ Responsible Individual suitability questionnaire	33
Annex 6 – Summary of information required in the application form	35
Annex 7 – Registration Determination Framework	40
Annex 8 – Disqualification from Registration	46
Annex 9 – Applying for a waiver	48
Annex 10 – When a Premises Visit may be undertaken	55
Annex 11 - Representations Process	58
Annex 12 - Expectations re Communication with CIW	61

# 1. Introduction

## The purpose of registration

As the regulator of social care in Wales, one of CIW's core functions is to ensure that only those people who are judged to be fit and are likely to provide good quality care are registered to do so.

The registration process acts as a gatekeeper for those wishing to provide a regulated service and is the first step in how we protect people who use services from receiving poor care.

The register we keep provides a public record of those involved in providing care services in Wales and the individuals associated with them.

This guidance sets out our approach to registration, including the principles and processes we follow when using our powers under the following legislation.

- Children and Families (Wales) Measure 2010 ("the Measure")
- The Child Minding and Day Care (Wales) Regulations 2010
- The Child Minding and Day Care (Wales) (Amendment) Regulations 2016
- The Child Minding and Day Care (Disqualification) (Wales) Regulations 2010

And also,

- National Minimum Standards for Regulated Child Care

Our work is based on a set of principles:

**Being people focused** – we put people who use regulated services at the centre of our work and consider the impact of services on improving people's well-being.

**Supporting improvement** – we make judgements about services. We acknowledge best practice, identify poor practice and promote improvement in care services.

**Being transparent** – we strive to write clear reports so that people can understand the basis on which judgements are made.

**Being fair** - we base our judgements on the evidence gathered as part of an inspection and provide an opportunity for providers to question factual accuracy and findings.

**Being robust** – we take firm and timely action when services provide poor care or place people at risk.

**Being proportionate** – by focussing on what matters most.

**Being efficient** - by making best use of ICT and seeking not to place unnecessary burdens on those providing care and support services.

### **Rights based approach**

Upholding the rights of people is at the heart of our work. We take account of the objectives of the United Nations Convention on the Rights of the Child (UNCRC) and the Welsh Government's 'Children's Rights Scheme', which are enshrined in the Rights of Children and Young Persons (Wales) Measure 2011

The relevant articles of the UNCRC, the European Convention of Human Rights, the Human Rights Act 1998 and the Equality Act 2010 are embedded within our inspection frameworks. Inspectors will consider how providers promote people's rights, to ensure children and adults have a voice, are safe, treated with respect and helped to develop their full potential.

The Glossary of Terms under Annex 1 explains the terminology that has been used frequently throughout this guidance.

## Which services need to be registered?

Any person providing a child minding or day care service under the Measure is required to register with Care Inspectorate Wales.

A variety of different Child Care and Play services fall within the definition of day care, these are:

- Full day care;
- Sessional day care;
- Out of school childcare;
- Crèches; and
- Open access play provision;

The definitions of child minding and day care services are set out under Part 2 of the Children and Families (Wales) Measure 2010 and in Annex 2 of this guidance.

Before submitting an application to register a regulated service, a provider should consider the definitions and exemptions set out below.

### Child minder

A person acts as a child minder if he or she looks after one or more children under the age of twelve on domestic premises for reward.

“Domestic premises” means premises occupied as a private dwelling, and includes any garden, yard, garage and outhouse etc.

“For reward” can include money and gifts of any kind as payment for a service that has been provided.

### Exceptions

Where care is provided for **under two hours** in any one day, this does not meet the threshold for registration.

Care provided **in the child’s own home** does not fall within the definition of a child minder. This exception also extends to children of a second family being cared for in the same home.

An arrangement between friends, where **no payment** (whether money or money’s worth) is taking place, does not require registration.

If the period during which the child is cared for is between **6pm on any one day and 2am** the following day then this does not meet the definition of child minding.

## Day care

A person provides day care for children where care is provided at any time for children under the age of twelve on premises other than domestic premises. Where the term 'day care' is used this includes the range of different childcare and play provisions.

## Exceptions

Where care is provided for **under two hours** in any one day, this does not meet the threshold for registration.

Registration is not required if the total period of care in a premises is provided on **fewer than six days** in any calendar year. CIW must be notified in writing, before the first occasion in that year.

Care provided to children in a **service regulated under different legislation** is exempt from registration. Examples of these services include:

- Care home service
- Residential family centre service
- A hospital

**Overnight care at a hotel**, guest house or other similar establishment for a child staying there is exempt from registration, providing the care only takes place between the hours of 6pm on any one day and 2am the following day. However, the exemption only applies where the person providing the care does so for no more than two different clients at the same time.

**Schools** are exempt from the definition of day care, where any care provided is incidental to the provision of education.

Registration as a day care service is not required if the care provided is **incidental to tuition or coaching** in the following activities:

- sport,
- performing arts,
- arts and crafts
- school study or homework support,
- religious or cultural study.

However, this exclusion does not apply where the children are below the age of five years and attend for more than 4 hours a day, or the person offers coaching or tuition in more than two of the above activities.

## Provider Types

Child minders must register as an individual, in their own name.

Childcare and Play providers can apply to register as either Individuals or Organisations. The application form provides a list of legal entities from which providers must indicate the type of legal entity they are registering. This list is set out below.

### Individuals:

- Individual
- Joint Registered Persons (Childcare and Play service run by more than one Individual)

### Organisations:

- Limited Company
- Public Limited Company
- Limited Liability Partnership
- Charitable Company
- Charitable Incorporated Organisation
- Local Authority
- Local Health Board
- Other Corporate Body
- Partnership
- Committee
- Charitable Trust (includes Unincorporated Charity)
- Other unincorporated body

## Individual

An individual may register to provide a regulated service as a sole trader.

Registration is in the individual's own name. This means that any contracts entered into with parents or staff must also be in the individual's own name. If the individual also has a limited company they use to contract with parents, staff or commissioners, the application must be in the name of this company, unless they are a child minder.

## Joint Registered Persons

Two or more individuals may become Registered Persons for a service. Whilst the individuals can submit a joint application form, the registration is in the name of each individual.



# Organisations

## Limited Company

A limited company is a type of business structure that is a legal entity in its own right. Limited companies may be limited by shares or by guarantee and must be registered with Companies House. In both cases the company can enter into contracts in its own name and is responsible for its own actions, finances and liabilities.

A limited company must have at least one director.

Where a company is a subsidiary of a parent or holding company, the legal entity responsible for providing the service must register with us. For example, this must be the company that enters into contracts with commissioners and individuals using the service, employs staff and holds a policy of insurance in respect of the service being provided.

## Public Limited Company (“PLC”)

A PLC is a type of limited company whose shares can be freely bought and sold by the public. A PLC must be registered with Companies House and must have at least two directors and a secretary.

## Limited Liability Partnerships (“LLP”)

A LLP is a body corporate and a legal entity separate from its members. A LLP is incorporated by registration at Companies House.

The members of a LLP are those that sign up to the incorporation document and any others who have subsequently become members by agreement with the existing members.

## Charitable Company

A charitable company is registered both at Companies House (as a company) and with the Charity Commission as its own legal entity. By having corporate status a charitable company can enter into contracts in its own name and is responsible for its own actions, finances and liabilities. As a limited company, the charity will have directors and members.

## Charitable Incorporated Organisation (“CIO”)

CIOs are charitable organisations with their own legal identity. They are able to enter into contracts in their own name and have limited liability, which protects members and trustees from financial losses. CIOs are registered with the Charity Commission but will show on Companies House. **NOTE – these are different from Charitable Companies.**

There are two types of governance structure for CIOs:

- Foundation CIO – the only members of the organisation are the trustees.
- Association CIO – this organisation has members and trustees.

### **Other corporate bodies**

There are various other types of corporate bodies, which can enter into contracts in their own name and are responsible for their own actions, finances and liabilities. These may be regulated by Companies House or by the Financial Conduct Authority (FCA).

Examples of these are:

- Community Benefit Societies – FCA
- Community Interest Companies – Companies House
- Industrial and Provident Societies – FCA
- Co-operatives – FCA

If the type of corporate body you are applying to register does not appear in the list above, you should select “Other corporate body” on the application form.

### **Local Authorities**

Local authorities are bodies corporate established under section 21 of the Local Government Act 1972.

Whilst they are bodies corporate they are not registered with Companies House and do not have a company number.

### **Local Health Board (LHB)**

LHBs are bodies corporate established under section 11 of the National Health Service (Wales) Act 2006.

### **Partnerships**

A partnership consists of two or more individuals agreeing to work together for a shared business venture. The individuals (partners) share in the profits and liabilities of the partnership.

If an existing partner leaves or a new partner joins the registered partnership, generally this creates a new partnership, which is a new legal entity.

Whilst a partnership is not legally required to have a partnership agreement, we will need to be satisfied in relation to the governance arrangements in place.

### **Unincorporated bodies**

#### **Committee**

A committee is a group of people who come together to work towards a common goal, often on behalf of a larger organisation. Where a committee is seeking to register with us, we will need to be satisfied that there are robust governance arrangements in place.

The individuals that make up the committee are individually responsible for the actions, finances and liabilities of the committee.

### **Charitable Trust**

A charitable trust or unincorporated charity is an organisation formed for the advancement of education, promotion of public health and comfort, relief of poverty, furtherance of religion, or any other purpose regarded as charitable in law.

In most cases a charitable trust will need to register with the Charity Commission.

### **Other unincorporated bodies**

There may be other types of unincorporated bodies that wish to register to provide a service. If the type of unincorporated body you are applying to register does not appear in the list above, you should select “Other unincorporated body” on the application form.

### **Who should register with CIW?**

CIW need to be satisfied that the person/organisation responsible for providing the service is the one seeking registration. Any queries about who should be registering with CIW, can be dealt with by our Registration Team. There is also further guidance in relation Charitable Incorporated Organisations and services provided on school premises set out at Annexes 3 and 4 retrospectively.

## **Making an application**

All applications to register must be made via CIW Online.

We recognise that a small number of applicants may have difficulty accessing CIW Online. We suggest seeking alternatives; such as local libraries or other venues offering reliable internet access.

The application form requires the following information:

### **Information about the Registered Person**

This part of the form will capture details about the Registered Person. Where the Registered Person is an organisation, we require information about the individuals involved as part of our fit and proper person assessment. Applicants will need to specify the type of legal entity they are applying as, for example individual, limited company, charitable company etc.

### **The type of regulated service(s) you are applying to provide**

Information about the regulated service(s), including:

- the location;
- premises;
- maximum number of children using the service;
- the type of provision, for example full day care, out of school childcare, open access play provision etc.

### **The designated Responsible Individual (where applicable)**

There must be a designated Responsible Individual for any organisation seeking to register.

### **Who must complete the application form?**

The application must be completed by the Registered Person or Responsible Individual as follows:

- Child minder – the child minder
- Day care individual with a sole Registered Person – the Registered Person
- Day care individual with joint Registered Persons – one lead Registered Person. The other Registered Persons will need to complete specific information about themselves
- Day care organisation – the Responsible Individual. If there is more than one Responsible Individual one lead Responsible Individual. The other

Responsible Individuals will need to complete specific information about themselves

- Day care organisation, a partnership – the partner who is the appointed Responsible Individual.

The online application process clearly shows when each section of the form is complete. The applicant can then submit the application.

Applicants are asked to indicate if they agree to communicate with us electronically. This will include all letters and legal Notices.

### **Required information and documents**

The application must be complete before we can accept it. Annex 6 contains a more detailed summary of the information and documentation required in the application form.

### **Child Minders**

CIW require an enhanced DBS certificate number in the application form for the child minder, child minder assistants and child minder household members aged 16 years and older. For this check to be valid it must be less than 3 months old at the point of submission of the application, or the individual must be on the DBS Update Service.

It is possible to apply for a DBS certificate(s) through CIW's third party provider. Please contact CIW for more information on how to do this.

DBS certificates must be viewed as part of the registration process. Certificates can be seen by the registration inspector at the premises visit or brought by the individual to a suitability interview.

### **Childcare and Play services**

CIW require an enhanced DBS certificate number in the application form for all Registered Persons, Responsible Individuals and Persons in Charge. For this check to be valid it must be less than 3 months old at the point of submission of the application, or the individual must be on the DBS Update Service.

These DBS checks should be undertaken through the service provider or supporting organisation. If this is not possible the required certificates can be applied for through CIW's third party provider. Please contact CIW for more information on how to do this.

### **Progress updates**

Once the application has been submitted, the applicant can track its progress via CIW Online.

An application will not be accepted until it has passed CIW's **completeness check**, see Annex 6. Where an application does not pass the **completeness check** the applicant will be notified of the areas requiring their attention.

The completeness check is solely to ensure that key information is valid and or included and is not a check on the quality of the information that has been submitted.

Once the **completeness check** has been passed, the application is accepted by CIW and the applicant is notified.

The progress of the application will be displayed on CIW Online.

### **Making changes after an application has been submitted**

There may be occasions when changes need to be made to the persons named within the application after it has been submitted and accepted by CIW. For example, the Person in Charge may not have a suitable qualification and so the applicant decides to appoint a different Person in Charge, or a child minder household member aged 16 years and older no longer lives at the premises.

The applicant is able to make these changes via CIW Online.

If any key roles (such as the Person in Charge or Responsible Individual) are removed from an application, we will not progress the application until all key roles have been filled.

## **Assessing an application**

Once the application has been accepted we carry out a **quality assessment**.

### **Factors for determination**

When determining an application we will consider the following:

- Does the application form contain all of the required information?
- Are we satisfied the Registered Person or Responsible Individual is a ‘fit and proper person’?
- Are we satisfied the Registered Person will comply with the requirements of the regulations?

Annex 7 sets out our Determination Framework, which includes the sources of evidence we consider in making our decisions and our expectations.

### **Does the application contain all required information?**

Our initial completeness check will ensure that the application form contains all of the required information. If we find that the information or documentation that has been provided is not sufficiently detailed we will ask for this to be rectified.

### **Fit and Proper person**

CIW must be satisfied the Registered Person or Responsible Individual are “fit and proper” to provide regulated services. The Regulations set out the information an applicant must provide, however, CIW must also consider all matters we think appropriate.

Our assessment of fitness will include any information that is already known to us about a Registered Person or Responsible Individual. A Registered Person and Responsible Individual must complete a Fit Person Questionnaire as part of the application form, see Annex 5. A Fit Person Interview may also be part of the assessment process.

We may contact other authorities or regulators (such as the Police, Social Services or Ofsted) for information where appropriate.

When considering any information that we receive from contacts with other authorities or regulators we will take account of issues such as:

- (a) the nature and seriousness of any offence event(s);
- (b) harm caused to any child/ person, or any evidence of an intent to cause harm;
- (c) when the offence occurred
- (d) any action taken by the person to remedy the matter.

CIW will consider whether any further action is required. This may include requesting further details in writing or holding an interview, in order to establish whether the disclosure is likely to have an impact on the applicant's suitability to provide the service.

Registered Persons will be required to undergo a Social Services Department (SSD) check. These checks are carried out by CIW to consider whether an applicant is disqualified from caring for children in accordance with The Child Minding and Day Care (Disqualification) (Wales) Regulations 2010.

In the event of any positive information on the SSD check, CIW will consider whether any further action is required. This may include requesting further details in writing or holding an interview in order to establish whether the information is likely to have an impact on the applicant's suitability to be providing a regulated service.

A child minder and Person in Charge must provide two references in relation to their competence to fulfil the roles for the regulated service(s).

### **Compliance with the Regulations**

CIW will need to be satisfied the service will be provided in such a way that it complies with all relevant legislation. This will include the regulations made under the Measure and any other legislation that is relevant to the service, such as health and safety legislation.

The Regulations and National Minimum Standards set out the requirements and recommendations for Registered Persons. Regulated childcare encompasses a wide range of different types of provision, to include full day care, out of school childcare and open access play provision. Registered Persons must have regard to requirements and standards that may differ according to the nature of the service. Our Determination Framework provides greater detail on the sources of evidence we use to reach our registration decisions.

We may undertake a premises visit as part of a registration application. This visit is carried out to assess the applicant's ability to meet regulatory requirements with regard to the suitability of the premises. The Registration Inspector must therefore be able to view the premises to make that assessment.

CIW does not visit and assess the suitability of a premises prior to an application being submitted.

An application for registration should not be submitted unless the premises is ready for assessment, or will be ready within the 14 week timescale CIW allow for determination of an application.



Annex 10 gives further information about the types of application that CIW assess and whether a premises visit is likely to be undertaken.

CIW use a checklist to assist with assessment of the premises if a visit is required.

In reaching our registration decision, we will be reasonable and proportionate in the information we request and only ask for additional evidence when it is necessary to assist us in our decision making.

We will endeavour to determine registration applications within the CIW recommended timescales. If we require any additional information or where there are specific issues that need to be resolved in relation to a service, we may need to extend the time it takes us to process the application.

Once registered our expectation is Registered Persons continue to engage with CIW, where required. Failure to do so could mean CIW cannot be satisfied that a person remains suitable to be registered. Annex 12 sets out our expectations with regard to Registered Persons communication with CIW.

## **Disqualification from Registration**

Some offences including those listed in The Child Minding and Day Care (Disqualification) (Wales) Regulations 2010 mean that a person may be disqualified from registration. A person may also be disqualified from registration if they live in the same household as another person who is disqualified from registration, or in which another person who is disqualified is employed.

As part of the application form the applicant is required to submit declarations in relation to the suitability of any persons likely to be in contact with children using the service.

Applicants must provide information that is to the best of their knowledge and belief, true and accurate. It is an offence to knowingly make a statement in an application for registration which is false or misleading and to do so may lead to prosecution and/or the refusal or subsequent cancellation of registration.

Annex 8 contains further information about disqualification from registration.

## **Applying for a waiver**

Where an individual is disqualified from registration, they are entitled to apply to CIW for this disqualification to be waived. Each request for a waiver will be given consideration by CIW on an individual basis.

Annex 9 provides further details about the process of requesting a waiver and how CIW makes decisions in relation to waiver applications.

## **Withdrawing an application before determination**

The Measure requires us to determine an application to register, either by granting or refusing it. Whilst this is the strict legal position, we recognise that an applicant may request to withdraw an application before it is determined. In some circumstances it may be appropriate for us to treat the application as withdrawn.

Any decision to withdraw must be made by applicants themselves, who are free to seek their own legal advice should they so wish.

### **If an applicant seeks to withdraw an application**

The applicant should contact the Registration Team in writing to explain the circumstances leading to their request to treat the application as withdrawn. The Registration Inspector will stop proceeding with the assessment of the application and will instead write their recommendation for withdrawal.

Based upon the applicant's explanation of the circumstances and the Registration Inspector's recommendation the Team Manager will then decide whether it is appropriate to treat the application as withdrawn, rather than determining it. If approved, the application will be recorded as withdrawn.

There may be circumstances where CIW will proceed to determining an application even though an applicant has indicated they are no longer seeking to be registered. For example, if an application is submitted and the interview process and other information received leads CIW to the clear view that the applicant would be unsuitable to be registered. In these circumstances CIW will determine the application and refuse it.

There are additional implications of any refusal to register. Should an application for registration be refused this leads to the person being disqualified from being able to operate or have financial involvement in day care and child minding unless a waiver is granted under the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010.

## **Registration decisions**

### **Granting an application**

Where we intend to grant an application, we will issue a letter granting the application and a certificate detailing the conditions of registration. Registration takes effect on the same day the application is approved.

### **Refusal of an application**

Where we intend to refuse an application to register, we will issue a Notice of Intention.

The Notice will set out the reasons why we are refusing the application and the timescale for making representations about our proposal.

A Notice of Decision to refuse an application which is issued following a Notice of Intention takes effect 28 days after it is issued, unless an appeal is made to the Tribunal.

## **Representations and Appeals process**

### **Representations**

In the event that we issue a Notice of Intention to either impose conditions on a registration or refuse an application, the Notice will give a deadline to make representations to us. This will be set out in the Notice, but must be a minimum of 28 days.

We will aim to respond by issuing a Notice of Decision within 28 days of the deadline for representations elapsing. If we are not able to respond within 28 days we will inform the applicant of this and the reasons why. In such cases we will issue a Notice of Decision within 56 days of the deadline for representations elapsing. We consider representations in line with our Representations Process, see Annex 11.

The Notice of Decision will set out whether we intend to take the proposed action, the reasons why and explain any rights of appeal.

### **Appeals**

Any appeal must be made directly to the Tribunal by the deadline specified in the Notice of Decision. The Tribunal will then set the timetable for the proceedings.

The Tribunal can uphold the decision to refuse the application, reverse the decision, direct that the application be granted, or make any other order it thinks appropriate.

## Conditions of Registration and Variations

### Conditions of registration

At the point of registration all Child Care and Play providers are provided with a certificate containing their conditions of registration.

CIW may impose such conditions as they deem appropriate at the point of registration. These conditions will vary depending on the type of service.

For a **child minder** the service will always have the following standard conditions of registration:

- The service address where child minding is to be carried out
- The maximum number of children to be looked after at any time

Child minders are registered for the standard maximum of 10 children where there are no concerns about suitability and space at the premises allows.

There is an additional condition of registration that is used when a child minder is working with another child minder at the same address, or a child minder is working with an assistant at the same address and the maximum number of children exceeds 10.

For **child care and play services** the service will always have the following standard conditions of registration:

- The maximum number of children to be looked after at any time
- The name of the Responsible Individual(s) – where the Registered Person is an organisation

We are able to impose conditions on a Registered Person's registration both at the point of registration and once the service has become operational.

### Variations of conditions

A Registered Person's conditions of registration can be varied either by us taking action to do so, or by Registered Person application.

#### Action taken by us

In the following circumstances we will issue a Notice of Intention to:

- Impose conditions on a Registered Person's registration
- Vary conditions on a Registered Person's registration
- Remove conditions on a Registered Person's registration
- Refuse an application to vary conditions on a Registered Person's registration

- Refuse an application to remove conditions on a Registered Person's registration

All Notices we issue will set out the action we intend to take, the reason(s) for taking the action and a deadline for the recipient to make representations to us. The timeframe for making representations may vary depending on the circumstances, but in all cases must be a minimum of 28 days from the date the Notice is issued.

Our Representations Process at Annex 11 sets out the process for making representations and how we respond to them.

### Applications by Registered Persons

Registered Persons can apply to vary their registration via CIW Online by:

- **Adding an additional day care service (a new application to register would previously have been required);**
- Removing a service;

Registered Persons can apply to vary their conditions in the following ways

- Varying the maximum number of children to be cared for at any time;
- Varying conditions imposed on their registration;
- Adding a Responsible Individual;
- Removing a Responsible Individual;
- Varying the service address (child minders only); and
- Adding/Removing a partner (Partnerships only)

Where we intend to grant an application, we will issue a Notice of Decision to grant the application. The decision takes effect on the same day the application is determined approved.

In the event that we issue a Notice of Intention to refuse an application to vary conditions, the Notice will give a deadline to make representations to us. Our Representations Process at Annex 11 sets out the process for making representations and how we respond to them.

## **Annex 1.**

### **Glossary of terms**

#### **Childcare and Play Staff/ Child Minder Assistant**

A person who is employed under a contract of employment to look after relevant children, or a person who volunteers to look after relevant children.

#### **Child minder**

A person acts as a child minder if the person looks after one or more children under the age of twelve on domestic premises for reward.

#### **Disclosure and Barring Service (DBS)**

The Disclosure and Barring Service (DBS) helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children. A standard DBS check will show any unspent convictions, warnings and reprimands. An enhanced DBS check will show all cautions, warnings and reprimands, as well as spent and unspent convictions. It can also search the children and vulnerable adults 'barred list' to see if the applicant is prohibited from working with these groups. Local police can add any relevant information about the applicant.

#### **Enforcement**

A range of actions taken by CIW against a service provider who does not comply with regulatory requirements or the conditions of their registration. This can range from the issuing of non-compliance notices to cancellation of a service provider's registration.

#### **Fit and proper person**

Someone deemed by the Welsh Ministers to be eligible and suitable for the role of registered person or responsible individual.

#### **Inspection**

This is when the inspectorate checks and assesses the standard of care and support provided by a service provider in the course of providing a regulated service.

#### **Legal entity**

This means an individual, company, or organisation that has legal rights and obligations.

**Lives at**

All persons who have reached the age of 16 years and who live at the relevant premises. (With regard to the application form and undertaking mandatory checks.)

**Person in Charge (PIC)**

In relation to child care and play, the individual appointed by the Registered Person as the person to be in full day to day charge of the provision of child care on the premises.

**Provider**

This means an individual, company, or organisation that is providing the service.

**Provider of a Childcare and Play service for children**

A person provides a childcare and play service for children if the person provides care at any time for children under the age of twelve on premises other than domestic premises.

**Registered Person (RP)**

A person who is registered under Part 2 of the Children and families (Wales) Measure 2010 to provide a service, such as a child minder or provider of a childcare and play service.

**Regulations**

Sets out the requirements that Registered Persons must meet in order to register and operate a service.

**Responsible individual (RI)**

A person designated by a Registered Person which is an organisation to act on their behalf in relation to a registered service(s). In relation to provision by an organisation which is a body corporate the Responsible Individual should be a director, manager, secretary or another officer, or where an organisation is an unincorporated association, an officer or a member of the governing body. This person has responsibility for the supervision of the provision of a childcare and play service.

**Service**

This refers to an individual service. For a child minder this is the child minder. For a childcare and play service this is a childcare and play service carried out at a specific location.



## **Social Care Wales**

Social Care Wales is the social care workforce regulator in Wales. It sets standards for, and develops the social care workforce; making them accountable for their work and provides information on care and support for the public, the workforce and other organisations.

## **Statement of Purpose**

The Statement of Purpose is the key document which sets out your vision for the service and how you intend to meet the needs of the children using it.

For more information on what the Statement of Purpose must contain, please see our [guidance on compiling a Statement of purpose](#).

## **The Regulations**

The Child Minding and Day Care (Wales) Regulations 2010

## **The Measure**

Children and Families (Wales) Measure 2010

## **Annex 2.**

### **Definitions of Regulated Childcare**

Regulated childcare encompasses a wide range of different types of provision.

In Wales, child minding, day care and play provision for children up to 12 year of age is regulated by Care Inspectorate Wales (CIW). Some registered services are funded by Local Authorities to deliver Early Years education (The Foundation Phase) for 3-4 year olds. These services are also inspected by Estyn to ensure they meet with educational standards.

Regulated childcare falls into two categories:

#### **1. Child minding**

Childcare provided by one or more people for children from birth up to the age of 12 years within a domestic premises that is not the child's own home for more than 2 hours per day for reward.

Child minders can offer: Full day care and part time care such as before and afterschool provision, including atypical hours e.g. evening, weekends and overnight provision, wrap around care (a), provision during the school holidays, funded education places (b), and free childcare places (c).

Anyone who proposes to act as a child minder must be registered with CIW unless they are excepted from registration under Part 2 of the Child Minding and Day Care Exceptions (Wales) Order 2010 (as amended) see Annex 2.

An applicant for registration as a child minder must not be disqualified from registration and must satisfy and be likely to continue to satisfy the prescribed requirements contained in Part 1 of Schedule 1 and Parts 3, 4 and 5 of The Child Minding and Day Care (Wales) Regulations 2010, (as amended). Anyone working or living on the premises with regular contact with the children must also not be disqualified.

Care for a child aged 12 or over is not currently subject to registration. However children aged 12 and over may be cared for by a child minder who is registered and providing care for children under the age of 12.

- 
- (a)** Childcare provision which supports those parents where children are receiving the funded education places to extend to a full school day
  - (b)** Foundation Phase places for children aged between 3 and 4 years, for part of the school day
  - (c)** Childcare available via funded programmes such as Flying Start, and/ or other Welsh Government programmes or initiatives.

## 2. Day Care and Open Access Play Provision

Childcare provided by one or more people or an organisation for children from birth up to the age of 12 years within non-domestic premises for more than 2 hours per day for reward.

Anyone who proposes to provide a childcare and play service must be registered with CIW unless they are excepted from registration under Part 3 of the Child Minding and Day Care Exceptions (Wales) Order 2010 (as amended) see [Annex 2](#).

Childcare and play on non-domestic premises includes a range of different provisions such as,

- **Full Day Care** – childcare for children from birth up to the age of 12 years for a continuous period of 4 or more hours in any day, in non-domestic premises.

It may include day nurseries, children's centres and some family centres, offering full or part time care, including before and after school provision, wrap around care, provision during school holidays, funded education places and free childcare places.

It can also encompass services offering a variety of different care services throughout the course of the day e.g. Sessional Day Care and Out of School Care. These can include Welsh and English medium playgroups, cylchoedd meithrin, wrap around care, funded education places and free childcare places.

- **Sessional Day Care** – Childcare for children from aged 2 to 4 years, which is for less than a continuous period of 4 hours in any one day on non-domestic premises. Where two sessions are offered in any one day, children must not attend more than 5 sessions per week. There must be a break between sessions with no children in the care of the provider.

It may include playgroups, cylchoedd meithrin, wrap around care, funded education places and free childcare places.

- **Out of School Childcare** – Childcare for children from aged 3 to 12 years, which is for more than a continuous period of 2 hours in any one day on non-domestic premises. It refers to childcare outside of a child's full time school day hours and includes care provided before school, after school and during school holidays. It does not include wrap around care and the Welsh Government free breakfast in primary schools scheme.
- **Crèches** - Childcare for children from birth up to the age of 12 years, provided on occasional days on non-domestic premises. They need to be registered

where they run from designated premises for more than 2 hours a day and more than 5 days in a year. Some are in permanent premises and provide care for children while parents are engaged in particular activities e.g. training or sport. Others are established on a temporary basis to care for children while their parents are involved in time limited activities e.g. a conference or exhibition.

- **Open Access Play Provision** – normally for children from 5 to 12 years, provided by staff and operating for over 2 hours a day and more than 5 days in a year. Can be permanent or temporary provision, located in a variety of settings with or without premises and can include holiday play schemes. The purpose is to provide staffed play opportunities for children, usually in the absence of their parents. Children are not restricted in their movements other than where related to safety matters and they are not prevented from coming and going as they wish.

Individuals and organisations who make a registration application must meet the statutory test under section 26 of the Children and Families (Wales) Measure 2010 (Amendment) Order 2016, namely that they are not disqualified from registration and satisfy and are likely to continue to satisfy the requirements under Part 2 of Schedule 1, and Parts 3, 4 and 5 of the Child Minding and Day Care (Wales) Regulations 2010 (as amended).

Care for children aged 12 or over is not currently subject to registration, but children aged 12 and over may be cared for at a setting that is registered as providing care for children under 12 years of age.

## **Annex 3.**

### **CIW's approach to Charitable Incorporated Organisations (CIO)**

#### **What is a CIO?**

Historically, providers with a charitable status would often set up a limited company in order to conduct their business and register with us. This resulted in them being registered with both Companies House and the Charity Commission. The Charities Act 2006 created the new type of legal entity called a Charitable Incorporated Organisation (CIO).

CIOs are charitable organisations with their own legal identity. They have incorporated status which means they are able to enter into contracts in their own name and have limited liability protecting members and trustees from financial losses. CIOs are registered with the Charity Commission, but will also show on a search of Companies House.

In 2018, legislation put in place a streamlined process for charitable companies to convert to a CIO whilst maintaining their legal status. This process results in the organisation retaining all of its assets and liabilities, without the need to transfer anything from the company to the CIO.

#### **What is the impact on registration with CIW?**

##### **New Providers**

For new providers, applicants must ensure that they clearly indicate the type of legal entity they are registering. As part of the registration process CIW will conduct checks with Companies House and the Charity Commission to ensure the correct legal entity has been identified.

##### *Who is providing the service?*

CIW will also need to be satisfied that the person/organisation responsible for providing the service is the one seeking registration. For example, CIW will consider who makes key decisions regarding the operation of the service, such as:

- Who enters into employment contracts with staff? Is it an individual person or a committee/board of Trustees?
- Who has control over the premises in which the service is conducted (whether as tenant or owner)? Is it an individual or committee?
- Where an individual is seeking registration, does the individual have a contract of employment with a committee/board of trustees?
- In whose name are the employee and public liability insurances?
- Who is accountable for any liabilities which may arise?

CIW will consider the answers to these questions (and any others which may be relevant) in determining who is providing the service. Where an individual has applied for registration, but the answers to these questions reveal that the service is being provided by a committee or board of trustees, then a new application in the name of the relevant organisation will be required.

Failure to identify the correct legal entity on an application to register may result in a delay to the service being registered.

### **Registered Providers changing their legal status**

In all scenarios, where a registered provider is seeking to gain status as a CIO, they must contact CIW. Depending on the type of legal entity currently registered with CIW there are different consequences and actions required in relation to the provider's registration.

Below are the various scenarios which may apply and the actions required:

#### *An individual is the registered person*

This scenario may apply to an individual registered in their own right, but who is also part of, or employed by, an organisation such as a committee or board of trustees. If the organisation is changing its legal status to a CIO, CIW will need to consider who is providing the service – the individual or the organisation.

Having considered the responses to the questions listed above; where the **individual registered person is responsible** for providing the service a new application for registration **will not be required**.

Where the **organisation is responsible** for providing the service a new application for registration **will be required**. The application to register will need to be in the name of the CIO and must be submitted within 28 days of the CIO being registered with the Charity Commission.

#### *A Limited Company is the registered person*

This scenario will apply to services where the registered provider is a limited company, without charitable status, and is establishing a CIO to take over providing the service.

The newly created CIO will have its own legal entity and therefore **will require a new application to register** the service with CIW. This application must be submitted within 28 days of the CIO being registered with the Charity Commission.

#### *A Charitable Company is the registered person*

Charitable Companies benefit from the streamlined process for converting to a CIO. This process allows the Charitable Company to retain their name and charity number as well as any assets or liabilities.

As the legal entity remains, **a new application to register the CIO is not required**. However, CIW must be informed of the conversion and be provided with the following details:

- Confirmation of name and charity number

- Confirmation of address
- The names of all trustees

This information must be provided within 28 days of the CIO being registered with the Charity Commission.

*An unincorporated organisation is the registered person*

This scenario will apply to services where the registered provider is an unincorporated organisation, such as a charitable trust or committee, which is converting to a CIO.

The newly created CIO will have its own legal entity separate from the unincorporated organisation and therefore **will require a new application to register** the service with CIW. This application must be submitted within 28 days of the CIO being registered with the Charity Commission.

In all scenarios where a new application is required, providing an application to register the service is submitted within the 28 day time period, the registration of the service will continue until the new application is determined.

### **Where to go for help**

For any queries relating to registration with CIW, please contact the Registration Team on 0300 790 0126 or [ciwregistration@gov.wales](mailto:ciwregistration@gov.wales).

For advice and guidance in relation to CIOs, please visit the Charity Commission website <https://www.gov.uk/government/organisations/charity-commission>.

## **Annex 4.**

### **Where Childcare and Play services are provided on school premises**

Where a Childcare and Play service is run on school premises the service must be registered with CIW. Who is required to register to provide the service will vary, depending on the governance arrangements.

Below are the various sets of circumstances where the governing body should register:

- The governing body at a school employs an individual to provide childcare.
- The head teacher directly manages the childcare but does it on behalf of the school.
- The head teacher employs a manager to provide childcare on behalf of the school.
- The head teacher and some members of the governing body form a committee to provide the care (even if they do not report back to the governing body as a whole).
- The governing body sets up a committee to have responsibility for the management and running of the out-of-school care provision and the committee reports to the governing body.

Below are various circumstances where other legal entities should register:

- The school commissions an individual or an organisation to provide childcare on its behalf - the individual or organisation commissioned to provide the service is the legal entity that will need to register.
- The governing body sets up a committee to have full responsibility for the running of the out-of-school care provision. The committee does not report back to the governing body - the committee is responsible for providing the care. The committee is the legal entity that will need to register.
- The out-of-school club is run by a parent committee, which has full control of the day to-day care provided and does not have to report back to the governing body- the parent committee is the legal entity that will need to register.
- A person or organisation hires a room on the school premises for the provision of care - the person or organisation renting the premises and providing the childcare is the legal entity that will need to register.



## **Annex 5.**

### **Registered Person(s)/ Responsible Individual(s) Fit and Proper Person Questionnaire**

The following section requires you to complete four questions about how you will fulfil your legal responsibilities for the service. Your responses will be used by us to assess your suitability.

You are advised to familiarise yourself with the relevant legislation, including:

- The Child Minding and Day Care (Wales) Regulations 2010
- The Child Minding and Day Care (Disqualification) (Wales) Regulations 2010
- The Child Minding and Day Care (Wales) (Amendment) Regulations 2016
- The Child Minding and Day Care (Exceptions) (Wales) Order 2010
- The Child Minding and Day Care Exceptions (Wales) Order 2016

You will also need to be familiar with and have regard to,

- National Minimum Standards for Regulated Child Care for Children up to the age of 12 years.
- Inspection Framework for Childcare

You can find the Regulations, National Minimum Standards and Inspection Framework on our website: [www.careinspectorate.wales](http://www.careinspectorate.wales)

Further guidance is available via the 'help' button.

#### **1. Managing the service**

How will you ensure that you manage your service and, where relevant, lead your staff (this includes child minder assistants/ volunteers/ students) effectively?

*Help text:*

*In your response you should consider Regulations 9, 12, 14, 15 & 16, as well as Part 5 of the Child Minding and Day Care (Wales) Regulations 2010, as amended by the Child Minding and Day Care (Wales) (Amendment) Regulations 2016. Also Inspection Framework Theme 4.1*

2. Your legal responsibilities with regard to persons at the service

A) If you are a child minder, What is your understanding of your legal responsibilities with regard to persons at your service? This includes:

- people that live at your home
- other registered child minders
- staff (child minder assistants/ volunteers/ students).

B) If you are Registered Person/ Responsible Individual of a day care service, What is your understanding of your legal responsibilities when appointing persons to work/ volunteer at your service?

Describe the arrangements that you have at your service to appoint a suitable Person in Charge and staff members.

*Help text:*

*In your response you should consider Regulations 27, 28 & 29 and Schedule 1 and 2 of the Child Minding and Day Care (Wales) Regulations 2010, as amended by the Child Minding and Day Care (Wales) (Amendment) Regulations 2016. Also Inspection Framework Theme 4.3*

3. Quality of Care Review

Describe:

- The systems and processes you will use to self evaluate and improve the quality of your service.
- The plans you have to improve outcomes for children in your care?

*Help text:*

*In your response you should consider Regulations 16 & 32 of the Child Minding and Day Care (Wales) Regulations 2010. Also Inspection Framework Theme 4.2*

4. Child Protection and Safeguarding

The protection of the child is the first priority and everybody's responsibility.

Describe:

- What you and your staff members (to include child minding assistant where relevant) would do if you had any concerns about a child's wellbeing.
- How you would implement your service's child protection policy.

*Help text*

*In your response you should consider Regulations 20, 22 & 23 of the Child Minding and Day Care (Wales) Regulations 2010. Also Inspection Framework Theme 2*

## Annex 6.

### Summary of the information and documentation required in the application form

#### Information required in the application form

Information about the service provider	
Individuals Multiple Registered Persons	Name Address D.O.B Contact details Professional qualifications and experience Employment history Details of any previous or current involvement in other regulated services in the UK Details of any other business interests DBS certificate number or DBS Updates Service details. (a DBS certificate must be less than 3 months old at the time of submitting the application or the applicant must be signed up to the DBS Updates Service)
Limited Companies Limited Liability Partnerships Private Limited Companies Charitable Companies Charitable Incorporated Organisation Other Body Corporate	Organisation name Organisation address Company number/Charity number Organisation contact details Links to other companies All organisational officer details, including: name, D.O.B, contact details and details of any other involvement with regulated services. Details of any previous or current involvement in other regulated services in the UK Details of any other business interests Designation of a responsible individual
Committee Charitable Trust Other Unincorporated Body	Organisation name Organisation address Organisation contact details Links to other organisations

	<p>All organisational officer details, including: name, D.O.B, contact details and details of any other involvement with regulated services. Details of any previous or current involvement in other regulated services in the UK</p> <p>Details of any other business interests</p> <p>Designation of a responsible individual</p>
<b>Partnerships</b>	<p>Partnership name</p> <p>Partnership address</p> <p>Partnership contact details</p> <p>Partner details, including: name, D.O.B, contact details and details of any other involvement with regulated services. Details of any previous or current involvement in other regulated services in the UK</p> <p>Details of any other business interests</p> <p>Designation of a responsible individual</p>

<b>Information about the Responsible Individual</b>	
	<p>Name</p> <p>Address</p> <p>D.O.B</p> <p>Contact details</p> <p>Professional qualifications and experience</p> <p>Employment history</p> <p>Details of any previous or current involvement in other regulated services in the UK</p> <p>Details of any other business interests</p> <p>DBS certificate number or DBS Updates</p> <p>Service details. (a DBS certificate must be less than 3 months old at the time of submitting the application or the applicant must be signed up to the DBS Updates Service)</p>

<b>Information about the service</b>	
	Name

	Address Contact details Maximum capacity of the service Age range of children using the service Person In Charge of the service, including their name, D.O.B, home address, contact details, qualifications, experience & employment history

### Documents required in the application form

Document Title	Who needs to upload these documents
<b>Statement of Purpose (SoP)</b>	A SoP is required for every service. CIW have produced a <a href="#">guide to compiling a Statement of Purpose</a> and a template that you may find useful, however it is not mandatory to use the template.
<b>Floor Plans</b>	Floor plans of premises with measurements in meters
<b>Certificates relating to professional and first aid qualifications relevant to looking after children under the age of 12 years</b>	Child minder and Person in Charge (PIC) - mandatory Registered Person (RP) and Responsible Individual (RI)- optional
<b>Medical Reference</b>	Every child minder, RP, RI and PIC
<b>Social Services Department enquiry consent form – signed and dated</b>	Registered persons – child minder and day care
<b>The following Policies and Procedures – YOU WILL ONLY BE ABLE TO UPLOAD ONE DOCUMENT UNDER EACH HEADING:</b> <ul style="list-style-type: none"> <li>• <b>Behaviour Management Policy</b></li> <li>• <b>Lost/missing/not collected child procedure</b></li> <li>• <b>Complaints Procedure</b></li> <li>• <b>Child Protection Policy</b></li> </ul>	Child minders, the lead RP (where there are multiple RPs), the lead RI (where there are multiple RIs)

<ul style="list-style-type: none"> <li>• <b>Procedure to be followed in the event of a fire or accident</b></li> </ul> <p><b>The following Policies and Procedures as required by the National Minimum Standards:</b></p> <ul style="list-style-type: none"> <li>• <b>Additional Needs Policy</b></li> <li>• <b>Confidentiality policy</b></li> <li>• <b>Medication Policy</b></li> <li>• <b>Equal Opportunities Policy</b></li> <li>• <b>Operational Plan</b></li> <li>• <b>Nappy Changing Policy (optional)</b></li> </ul>	
<b>Risk assessment, to include the premises, outdoor areas, outings on foot and in vehicles, fire safety etc</b>	Child minders, the lead RP (where there are multiple RPs), the lead RI (where there are multiple RIs)
<b>Copies of the organisation's last 2 annual reports</b> <b>(If the organisation is a subsidiary of a holding company the last two annual reports, if any, of the holding company and any other subsidiary of that holding company)</b>	All limited companies, public limited companies, limited liability partnerships, charitable companies, charitable incorporated companies or any other corporate bodies.
<b>The last annual accounts of the organisation, if any</b>	All limited companies, public limited companies, limited liability partnerships, charitable companies, charitable incorporated companies or any other corporate bodies.
<b>Certificate of insurance in respect of liability which may be incurred in respect of death, injury, public liability, damage or other loss occurring in relation to the propose provision of care</b>	This does not have to be provided with the application, however every provider must submit this before an application is determined.

## Documents to be available at the premises assessment

Please make available a copy of these documents for the inspector, who may take them for further assessment

Original DBS certificates for all relevant persons - Child minders, RPs, RIs, PICs, child minder assistants, persons aged 16 years and over who live at the child minding or day care premises.

Annual safety check for gas/ electrical/ log or oil burning appliances

Certificate of Insurance (if available)

Staff Disciplinary Policy (if relevant)

**Please ensure any other policies and procedures that support the aims and objectives of your Statement of Purpose are also available**

## **Annex 7:**

### **Registration Determination Framework**

**Does the application form contain all of the required information?**

<b>What we look at</b>	<b>Why</b>	<b>Our expectation is:</b>
Application form	To ensure compliance with the Registration Regulations	<ul style="list-style-type: none"><li>• All of the questions are completed</li></ul>
		<ul style="list-style-type: none"><li>• The information provided is valid e.g. DBS certificate number is correct and the correct check has been applied for, i.e. for vulnerable adults or children.</li></ul>
		<ul style="list-style-type: none"><li>• All of the required documents have been provided</li></ul>



## Are we satisfied that the applicant is a 'fit and proper person'?

What we look at	Why	Our expectation is:
Application form	To cross check the information provided with other sources of evidence	<ul style="list-style-type: none"> <li>The applicant has selected the correct provider type.</li> </ul>
Companies House	To confirm legal entity	<ul style="list-style-type: none"> <li>That the legal entity is registered as a company.</li> <li>That the directors listed on the application form are registered with Companies House.</li> <li>All other company information provided matches the information held on Companies House.</li> </ul>
Charity Commission	To confirm charitable status	<ul style="list-style-type: none"> <li>That they are registered as a charity.</li> <li>That the persons listed on the application form are registered with the Charity Commission as trustees.</li> <li>All the information held with the Charity Commission matches.</li> </ul>
Other regulatory bodies	Assessment of fitness	<ul style="list-style-type: none"> <li>Where the provider is/ has also been registered with another regulatory body, for example Estyn/ Ofsted, there are no other factors that would call into question their fitness.</li> </ul>
Declarations	Assessment of fitness	<ul style="list-style-type: none"> <li>The declaration has been signed by a person with sufficient seniority to do so.</li> <li>The applicant has confirmed the fitness of the provider/ any other relevant persons.</li> </ul>

Information held by CIW (CaSSI)	Assessment of fitness	<ul style="list-style-type: none"> <li>There are no other factors that would call into question fitness.</li> </ul>
---------------------------------	-----------------------	---

### Is the designated RP/ RI suitable?

What we look at	Why	Our expectation is:
Application form & Information about the organisation (excl. individuals)	Assessment of eligibility	<ul style="list-style-type: none"> <li>That the designated RI is in a suitable position within the organisation to oversee and make management decisions about the service.</li> </ul>
Identity document	Proof of identity	<ul style="list-style-type: none"> <li>That the RP/ RI will provide photographic proof of their identity to CIW. Acceptable forms of photographic identity are a driving licence or passport.</li> </ul>
Evidence of qualifications (if listed in the application form)	Proof of qualifications	<ul style="list-style-type: none"> <li>Where relevant qualification for the RP/ RI/ PIC have been listed on the application form, proof of these must be provided to CIW.</li> </ul>
Report of medical practitioner or equivalent	Assessment of fitness	<ul style="list-style-type: none"> <li>No issues have been identified with the RP's/ RI's/ PIC's ability to perform the role.</li> </ul>
DBS certificate	Assessment of fitness	<ul style="list-style-type: none"> <li>The RP/ RI has declared any offences/convictions appearing on the DBS certificate.</li> <li>The DBS certificate relates to area. i.e. children</li> <li>There are no other factors that would call into question fitness.</li> </ul>
SS reference	Assessment of fitness	<ul style="list-style-type: none"> <li>The RP/ RI has declared any information appearing on the SS certificate.</li> <li>There are no other factors that would call into question fitness.</li> </ul>
References	Assessment of fitness	<ul style="list-style-type: none"> <li>The references provided raise no issues relating to fitness – see Chapter of this Guidance</li> </ul>

Information from other regulatory bodies	Assessment of fitness	<ul style="list-style-type: none"> <li>Where the RP/ RI is or has been involved with other service(s) registered with another regulatory body, for example Estyn/ Ofsted, there are no other factors that would call into question their fitness.</li> </ul>
Declarations	Assessment of fitness	<ul style="list-style-type: none"> <li>The RP/ RI has declared that all information provided is correct.</li> </ul>
RP/ RI Questionnaire	Assessment of suitability	<ul style="list-style-type: none"> <li>All of the questions are complete.</li> <li>That the RP/ RI has a satisfactory understanding of their duties under the Regulations and has demonstrated that they are likely to fulfil those duties.</li> </ul>
RP/ RI Interview	Assessment of suitability	<ul style="list-style-type: none"> <li>All supplementary questions identified following RP/ RI Questionnaire are answered to our satisfaction.</li> <li>All required documentation (e.g. proof of identity) is supplied.</li> <li>Any issues of fitness identified have been addressed.</li> </ul>
Appointment of Person In Charge	Assessment of suitability	<ul style="list-style-type: none"> <li>That a PIC has been appointed and has at least a Level 3 qualification recognised on the Social Care Wales or Skills Active lists of Required Qualifications to work within early years and childcare services in Wales.</li> <li>Where the PIC does not have a suitable qualification 'due regard' has been given to the above lists and acceptable reasons given as to why this is the case. This will be discussed with the RP/ RI as part of the registration process.</li> </ul>

**Compliance with the requirements of the regulations and any other relevant legislation?**

What we look at	Why	Our expectation is:
Statement of Purpose (SoP)	To ensure compliance with the Regulations	<ul style="list-style-type: none"> <li>The SoP complies with Regulation 15(1) of the Child Minding and Day Care (Wales) Regulations 2010 (the Regulations) and regard has been given to the National Minimum Standards (NMS).</li> </ul>
Policies and Procedures	To ensure compliance with the Regulations	<ul style="list-style-type: none"> <li>The applicant makes available a copy of the mandatory policies and procedures required by the Regulations.</li> <li>The applicant makes available a copy of any additional policies and procedures required in accordance with the type of service, at the registration inspection.</li> <li>All policies and procedures meet the requirements of the Regulations and regard has been given to the NMS.</li> <li>We have the option to take the copy of the policies and procedures away with us and return them at a later date.</li> </ul>
Registration inspection assessment	To ensure compliance with the Regulations	<ul style="list-style-type: none"> <li>The premises reflects the floor plan provided as part of the application.</li> <li>The design, layout, facilities and equipment available will support children to achieve their best possible outcomes, and promotes and maintains their independence, safety and wellbeing.</li> </ul>
Certificate of insurance	To ensure compliance with the Regulations	<ul style="list-style-type: none"> <li>Public liability insurance is in place for the named service, in date and accounts for losses under both public and employers liability.</li> </ul>
Proof of ownership, or tenancy agreement (Child minder)	To ensure compliance with the Regulations	<ul style="list-style-type: none"> <li>The applicant has a legal right to use the premises for the purpose of providing a regulated service.</li> </ul>

		<ul style="list-style-type: none"> <li>Where a child minder is renting or leasing the premises, agreement has been provided by the landlord that a child minding service can be provided on the premises.</li> </ul>

## **Annex 8.**

### **Disqualification from registration**

The Child Minding and Day Care (Disqualification) (Wales) Regulations 2010 (“the 2010 Regulations”) set out the categories of persons who may be disqualified from registration in Wales as a child minder or a provider of day care. The categories include persons who have been found to have committed\*:

- an offence involving bodily injury to, or death of, a child;
- certain violent and sexual criminal offences against children and adults which are referred to in regulation 3(5) and Schedule 2 to the 2010 Regulations;
- an offence referred to in regulation 3(7) and Schedule 3 to the 2010 Regulations;
- an offence overseas, which would constitute an offence regarding disqualification under the Regulations if it had been committed in any part of the United Kingdom.

The Regulations further include persons who have been:

- made subject to an order or determination referred to in regulation 3(1) and Schedule 1 to the Regulations for example, removing a child from their care or preventing a child from living with them;
- included on the list of persons barred from working with children held by the Disclosure and Barring Service;
- made the subject of a disqualifying order;
- previously refused registration as a child minder or a provider of day care, or had registration cancelled;
- concerned in the management of, or had any financial interest in, a children’s home and had registration cancelled.

A person may also be disqualified from registration as a child minder or provider of day care if the person lives:

- in the same household as another person who is disqualified from registration;
- in a household where a disqualified person is employed and you intend to provide child minding in that setting.

A person who is disqualified from registration must not act as a child minder; provide day care; or be directly concerned in the management of any provision of day care. It is an offence for a person to provide child care in such capacity whilst disqualified from registration.

A person must not employ in connection with the provision of day care or child minding, a person who is disqualified from registration for example, registered child minder A must not employ assistant child minder B if B lives in the same household as C who is disqualified from registration due to being barred from working with children.

It is an offence for a person to knowingly employ a person who is disqualified.

A person may apply to CIW to waive a disqualification.

CIW does not however, have the power to waive disqualifications:

- included on the list of persons barred from working with children and vulnerable adults held by the Disclosure and Barring Service; or
- where a person has committed an offence against a child within the meaning of section 26(1) of the Criminal Justice and Courts Services Act 2000 and the court has ordered that the person is disqualified from working with children (under section 28(4) and 29(4) or 29A(2) of that Act).

\*A person has been found to have committed an offence if convicted of an offence, found not guilty of an offence by reason of insanity, found to be under a disability and to have done the act charged against them in respect of such an offence, or on or after 6 April 2007 given a caution in respect of an offence by a police officer. A person has been found to have committed an offence that is “related to” an offence if that person has been found to have committed the offence of attempting , conspiring or incitement to commit that offence; or aiding, abetting, counselling or procuring the commission of that offence.,

## **Annex 9.**

### **Applying for a waiver**

**The procedure for CIW staff for considering applications for waivers under the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010**

#### **1. Background**

- 1.1 This guidance applies to registered child minders and day care providers, those employing staff to work in these regulated services and those applying for registration to provide these regulated services.
- 1.2 Some people are disqualified from registration by Care Inspectorate Wales (CIW) as a child minder or as a provider of day care.
- 1.3 CIW may become aware of a potential disqualification in a number of different scenarios, including, but not limited to:
  - a) a person is considering registration and wants to discuss how a conviction may affect their application;
  - b) a person submits a completed registration application form and declares a relevant conviction;
  - c) the results of Disclosure and Barring Service (DBS) checks are received and reveal a relevant conviction;
  - d) a check of CIW records indicate a previous registration has been refused or cancelled; or
  - e) pre-registration inquiries of social services have revealed applicable orders have been made.
- 1.4 If a person fits within one of the categories for disqualification as set out in the Disqualification Regulations they must not act as a child minder, provide children's day care or be directly involved in the management of children's day care.
- 1.5 CIW must evaluate why the person may be disqualified from registration and take into account the full circumstances. After reviewing all available information, CIW has discretion to decide whether the disqualification impacts



upon the provision of a regulated service. Where a person applies to CIW to have their disqualification set aside, this is known as applying for a waiver.

1.6 This guidance sets out:

- who is disqualified,
- how to make an application for a waiver under the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010,
- CIW's procedure for dealing with applications for a disqualification to be waived.

1.7 For the purposes of this guidance the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010 is referred to as "the Disqualification Regulations". Similarly the Children and Families (Wales) Measure 2010 is referred to as "the Measure".

## **2. Reasons for disqualification**

- 2.1 The Disqualification Regulations set out the ways and circumstances in which a person may be disqualified from registration. This includes where a person has been convicted or received a caution in respect of certain offences against adults or children, where certain orders have been made in respect of their children, or where previous applications have been refused by CIW or their registration has previously been cancelled.
- 2.2 The Disqualification Regulations also set out where a person's disqualification may not take effect and the circumstances in which a person may apply to CIW to have their disqualification waived
- 2.3 The Disqualification Regulations set out that the registered person must notify CIW of any matter which would be a ground for disqualification of both themselves and any person who lives or works where the service is provided. If they fail, without reasonable excuse, to notify CIW then they are committing an offence.
- 2.4 The Measure makes it an offence to act as a child minder or provide day care, or be directly concerned in the management of any provision of day care in Wales while disqualified.
- 2.5 The Measure also sets out that a person is prohibited from employing any disqualified person in connection with day care or child minding services. Employing such a person is an offence under the Measure.
- 2.6 There are many different ways in which someone may be disqualified under the regulations. Inspectors are advised to consult the Disqualification

Regulations and the Measure in the first instance. Inspectors may request further advice from CIW legal services if required.

### **3. Application to waiver a disqualification**

- 3.1 A person who is disqualified may apply to CIW for a waiver of disqualification. Such an application is voluntary. Only when a person applies for a waiver can CIW consider whether to grant one. CIW may invite a person to apply for a waiver as they may not be aware that this is possible in certain circumstances.
- 3.2 The Disqualification Regulations allow CIW to waive disqualification if a person would be disqualified under regulations 3, 4, 6(1), 6(3) or 8. A person who would be disqualified under one of these regulations may apply to CIW to waive the disqualification.
- 3.3 It is important to note that CIW does not have the power to waive disqualification where a person:
  - a) is included on the list of persons barred from working with children and vulnerable adults held by the Disclosure and Barring Service; or
  - (b) has committed an offence against a child within the meaning of section 26(1) of the Criminal Justice and Courts Services Act 2000 and the court has ordered that the person is disqualified from working with children under section 28(4), 29(4) or 29A(2) of that Act.

In order to apply for a waiver a registered person or a person applying for registration must inform CIW of the circumstances of their disqualification.
- 3.4 In the event that an applicant has not disclosed their disqualification, consideration must be given to refusing their registration. However, the applicant may make representations against this refusal. Representations may include an application to waive their disqualification.
- 3.5 To apply for a waiver to their disqualification, CIW require the request to be made in writing. The person must give CIW as much information as possible.

## 4. Making a Judgement

- 4.1 Once the facts are brought to CIW's attention the inspector must consider all available information about the circumstances of the case, requesting further information as required.
- 4.2 The inspector may invite the disqualified person (be they the applicant or a person who works / lives at the place of child care provision) to come to a CIW office so that they can discuss the details of their disqualification and other relevant issues. They may be accompanied if they wish.
- 4.3 If the applicant refuses or cancels the above meeting, a further appointment may be offered. This invitation should explain that this is their opportunity to provide relevant information that will help CIW in their decision making. It should be made clear that, if they fail to attend, a decision will be made using the existing information held by CIW.
- 4.4 CIW must be satisfied the applicant is suitable to be registered to act as a child minder or day care provider. Therefore CIW will assess and weigh up the following factors when considering an application for a waiver:
  - a) Openness of the applicant - were the disclosures made by the applicant full, accurate and honest?
  - b) Relevance of the conviction - This judgment should weigh the nature of the offence and the potential impact on a registered service, particularly whether it may present any risks to minded children CIW must evaluate whether the offence was planned or involved any sort of deception.
  - c) Facts of the offence(s) or matter(s) - What were the circumstances surrounding the offence or the matter leading to the disqualification? What explanations were offered by the applicant?
  - d) Seriousness of the matter – How serious is any offence or other matter revealed? What impact would similar behaviour be likely to have on children attending the proposed service?

Where a person has abused their personal power in the event which makes them disqualified, consideration of their suitability should form part of determining the application for registration, in addition to considering an application to waiver. This will be the case whether this abuse was physical, emotional, financial or sexual.

Past behaviour would also be seen as a strong indication of an applicant's unsuitability where it involved:

- Deception, premeditation, persistent risk taking and / or coercion

- If the disqualification is because of another person who lives or works in their household / day care provision, CIW must assess the ability of the registered person to safeguard children.
  - Consideration should be given to how much and the nature of the contact that person is expected to have with the children cared for and whether any conditions imposed on the registration might minimise concerns.
- e) Patterns of behaviour – Has there been any repetition of the behaviours in question? Do the matters disclosed suggest that the applicant has a pattern of offending behaviour or other relevant matters? CIW will be most concerned where rule breaking is frequent or the same or similar offences re-occur.
- f) Timing and applicant's circumstances - How long ago was it since the offence or other matter occurred? What age was the person at the time of the event, and if appropriate the age of any victim? Have the applicant's circumstances changed since the offending behaviour or the other relevant matters? CIW will assess whether any matters disclosed appear to be confined to:
- adolescence
  - any specific period when the applicant can demonstrate a significant disruption of their personal circumstances and social functioning, or
  - any period more than 15 years ago.
  - CIW will be most concerned where rule breaking (law and socially accepted boundaries) persists into later life.
- g) Applicant's attitude - What is the applicant's attitude to these offences now and what is their understanding of the implications of the event? CIW will be most concerned where the applicant attempts to minimise the seriousness of their behaviour and demonstrates a lack of clear insight into the impact of their actions.
- 4.5 The above factors are examples and the list is not intended to be exhaustive. Each situation must be carefully considered on its own particular facts.
- 4.6 Where the disqualification arises because of a conviction or other matter being revealed about a person who lives or works in the applicant's household then the Inspector should first contact that person. His/ her consent to share the information with the applicant must be sought in order that the applicant can seek a waiver. If that consent is withheld then the inspector should seek advice from CIW Knowledge and Information Team about whether any information, and how much, may be shared with the applicant.
- 4.7 On consideration of the facts in the case the inspector will discuss the issues with their line manager and prepare a report setting out their assessment of the factors (a) to (g) in paragraph 4.4.
- 4.8 A copy of the inspector's waiver report will be sent to the applicant for them to review. This will be sent with a request that they confirm that the information contained within the waiver report is correct. The person should be

encouraged to make any changes to the report to ensure they are accurately represented. The inspector's recommendation will not be included in this correspondence.

## **5. Making recommendations**

- 5.1 The inspector will make a recommendation to approve or refuse the application for a waiver. The recommendation will be reviewed by the inspector's line manager.
- 5.2 The waiver report will be passed to the Head of Registration and Enforcement (or equivalent grade senior manager) within CIW for consideration and final sign off.
- 5.3 After coming to a decision, the decision maker will then inform the applicant (in writing) of their decision and the reasons for their decision. If the decision is to refuse to grant a waiver then the letter must explain the right of appeal to the Tribunal as follows:

*"You have the right to appeal against this decision to the Tribunal. If you wish to appeal you must do so by completing the Appeal application form CS A1 (First Tier Tribunal Health, Education and Social Care Chamber (Care Standards) and sending it to the First Tier Tribunal within 10 working days.*

*The Appeal Application form is available at  
<https://www.gov.uk/government/publications/form-cs-a1-appeal-application-form-child-care-providers-and-childrens-homes>*

*The contact details for the First Tier Tribunal (Health, Education and Social Care Chamber) are*

*HM Courts and Tribunals Service*

*Care Standards*

*First Floor, Darlington Magistrates' Court*

*Parkgate*

*Darlington*

*DL1 1RU.*

E-mail: [cst@hmcts.gsi.gov.uk](mailto:cst@hmcts.gsi.gov.uk)

*You are requested also to advise the Welsh Ministers of your intention to appeal by writing to Care Inspectorate Wales .*

- 5.4 Further support is available from your team manager or the team managers in the registration and enforcement teams.

**6. Withdrawal of Waiver**

- 6.1 CIW may, after giving written consent to waive disqualification, withdraw that consent (regulation 9(1) of the Disqualification Regulations). Withdrawing consent to waive disqualification means that the original disqualification is reinstated.
- 6.2 Withdrawing consent to waive a person's disqualification should be reserved for instances where, after written consent to waive disqualification has been given, further information has come to light in relation to that disqualification, which demonstrates that the disqualification should not have been waived.

## Annex 10.

### Decision making matrix regarding whether or not to complete registration site visit

#### Child minder service

Type of application	Visit required	If maybe, factors considered in making a decision to undertake a visit?
Initial application for registration - service not previously known to CIW	YES	N/A
Initial application for registration – to work with another already registered child minder at the registered child minder's address	LESS LIKELY	Floor plans, measurements, latest inspection report, compliance history, confirmation from existing provider of any changes which may have taken place since original registration, discussion with area inspector.
House move	YES	N/A
Increase in maximum number <ul style="list-style-type: none"><li>• Extension to premises</li><li>• Conversion or refurbishment</li><li>• Where the additional rooms have been seen previously and deemed suitable but were not being used.</li></ul>	YES  YES  LESS LIKELY	Floor plans, measurements, latest inspection report, discussion with area inspector. Written information about facilities, where there are queries
Voluntary cancellation of a child minder's service	NO	N/A
Application to vary or remove an additional condition (non routine conditions)	MORE LIKELY	Discussion with area inspector in relation to issues of non compliance, actions taken by provider to become compliant, outcome of concerns raised, plans to re-inspect.

#### Childcare & Play service

Type of application	Visit required	If maybe, how will we establish suitability?
Initial application for registration - service not previously known to CIW	YES	
Initial application for registration – service known to CIW but change of premises	YES	
Initial application for registration – change of provider, but same persons, premises, policies and procedures, eg change from individual registration to CIO	LESS LIKELY	Discussion with area inspector, compliance history, Confirmation from existing provider of any changes which may have taken place since original registration
Initial application for registration – currently registered provider sale of service to new provider	LESS LIKELY	Discussion with area inspector, compliance history, confirmation from existing provider of any changes which may have taken place since original registration
Change of accommodation, eg same address but different room / cabin not previously known to CIW	LESS LIKELY	Floor plans, measurements, risk assessments, fire evacuation procedure, written information about facilities where there are queries
Change of accommodation, eg same address but different room / cabin previously known to CIW	LESS LIKELY	Floor plans, measurements, latest inspection report, discussion with area inspector, written information about facilities where there are queries, confirmation from existing provider of any changes which may have taken place since accommodation was known to CIW
Increase in maximum number <ul style="list-style-type: none"> <li>• Extension to premises</li> <li>• Conversion or refurbishment</li> <li>• Where the additional rooms have been seen previously and deemed suitable but were not being used.</li> </ul>	YES   YES   LESS LIKELY	Floor plans, measurements, latest inspection report, discussion with area inspector. Written information about facilities, where there are queries
New Registered Person or Responsible individual	NO	



Voluntary cancellation of Registered Person or Responsible individual	NO	
Voluntary cancellation of service	NO	
Application to vary or remove an additional condition (non routine conditions)	MORE LIKELY	Discussion with area inspector in relation to issues of non compliance, actions taken by provider to become compliant, outcome of concerns raised, plans to re-inspect.

In all cases, this will only form part of the decision to visit or not. If any concerns are raised, by the overall application, the inspector will discuss the application with their line manager and a clear rationale will be provided in the registration report for the decision made.

## Annex 11.

### CIW Representations Process

#### Terminology

**“Regulated service(s)”** – this refers to any of the types of services defined under the Children and Families (Wales) Measure 2010 (the Measure), such as a child minder or a day care service.

**“Service(s)”** – this refers to an individual service registered under the Measure.

**“Notice”** – refers to a Notice of Intention or Notice of Decision, unless otherwise stated.

#### Legal framework

##### The Children and Families (Wales) Measure 2010

We are required to issue a **Notice of Intention** in respect of the following actions:

- Refusing an application to register
- Impose a new condition on a person's registration
- Vary or remove any condition imposed on a person's registration
- Refuse to grant an application for the variation or removal of any such condition
- Cancel a person's registration

#### Right to make representations

All Notices we issue will set out the action we intend to take, the reason(s) for taking the action and a deadline for the recipient to make representations to us. The timeframe for making representations may vary depending on the circumstances, but in all cases must be a minimum of 28 days from the date the Notice is issued.

Those making representations to us should clearly state this in their communication with us. We will seek to clarify the status of any communications received in response to a Notice, where it is unclear if the person is making representations.

Representations can be made either in writing or orally. The process for both is set out below.

Representations should be submitted with any supporting evidence being relied upon. Failure to do so is likely to affect our consideration of the representations or cause a delay.

#### Timeframe

Once representations have been received, we aim to respond by issuing a Notice of Decision/Cancellation within 28 days of the deadline for representations elapsing. This is not 28 days after receipt of the representations.

If we are not able to respond within 28 days we will notify the recipient of the Notice. In such cases we will issue a Notice of Decision within 56 days of the deadline for representations elapsing and explain the reasons for the delay.

### **Process**

Upon receipt of representations, a Decision Maker will be allocated. The Decision Maker will be someone of an equivalent or senior grade to the inspector who signed the Notice and will have had no involvement with the decision to take the proposed action.

### **Written representations**

These can be submitted by post or email, along with any supporting evidence. Care should be taken to protect the personal or sensitive personal data of individuals at the service.

### **Oral representations**

Those wishing to make oral representations, should notify us of this as soon as practicable. Oral representations will be heard by the Decision Maker at a mutually convenient time and location. This should be within 28 days of notification by the recipient of the Notice that they wish to make oral representations.

The recipient of the notice can attend to make their objections in person or they can arrange for their objections to be made by a representative. It would generally be expected the person would attend with their representative.

If, for any reason, the recipient of the notice does not attend but wishes their representative to proceed to make oral objections in their absence, we require written authorisation from the recipient of the notice to this effect.

The oral representations hearing does not include individuals giving evidence or the calling of witnesses, and there is no provision for the attendance by the inspector or manager responsible for issuing the Notice.

### **Decision making**

The Decision Maker will consider all evidence relevant to the proposed action, including:

- the Notice proposing the action,
- any supporting evidence relied upon for taking the action,
- the representations made by the recipient of the Notice, and
- any supporting evidence supplied by the recipient of the Notice.

As part of reaching their decision, the Decision Maker may request additional information including requesting an inspection of the service(s). The outcome of the inspection will be considered in the form of a draft inspection report. Due to the timescales we must adhere to in considering representations, there is insufficient time to await the publication of the report before considering the outcome of the inspection. Where the Notice is upheld by the Decision Maker and the draft report is challenged by the recipient of the Notice, this should be identified in any appeal made to the Tribunal.

The Decision Maker may seek advice from Legal Services on matters of law and procedure. However, responsibility for the decision rests with the Decision Maker.

### **Outcomes following a Notice of Intention**

Having reached a decision, the Decision Maker must issue a Notice of Decision setting out their decision and the reason(s) for it. The decisions available to the Decision Maker are:

- to uphold the Notice of Intention, or
- to uphold the Representations.

### **Appeals**

Where there is a right of appeal to the Health and Social Care Tribunal, this will be clearly stated on the Notice of Decision.

## **Annex 12.**

### **Expectations re Communication with CIW**

Regulation 31 of the Child Minding and Day Care (Wales) Regulations 2010 requires Registered Persons to inform CIW about any changes to their service and care of children as listed in Schedule 4. This includes (but is not limited to) changes to:

- persons on the premises
- the child minding address
- the type of care provided
- hours of minding

CIW may also request other information about the provision of care to children in order to gain assurance of a Registered Person's ongoing suitability to be registered.

The Children and Families (Wales) Measure 2010 allows a Registered Person to voluntarily suspend their registration. CIW require the following information in relation to any request to voluntarily suspend:

- the reason why the suspension is being requested,
- the start date and end date for the period of suspension.

From time to time CIW may request an update on a Registered Person's ongoing suspension. It is important that the Registered Person engages with CIW and provides all necessary information in a timely manner. Failure to engage may mean CIW cannot be satisfied that the Registered Person remains suitable to be registered.

In cases where a Registered Person is failing to engage with CIW, we will instigate the following process:

CIW will try to contact the Registered Person through the personal contact details as provided at the time of registration, ie phone number, email address and home address. Over a two month period CIW will try twice in writing via letter/email and twice via phone.

If there is no response, CIW will issue a Notice of Intention to Cancel Registration to the most recent address provided by the Registered Person. If there is no response to the Notice within 28 days, we will issue a Notice of Decision. The registration will be cancelled after that 28 days, should the Registered Person not appeal to the Tribunal.

There are serious consequences to cancellation, including being disqualified from registration as a child minder or provider of day care in Wales.

The disqualified person also cannot be employed in connection with the provision of day care or working with a child minder in Wales.

**Please tell CIW:**

- if you move house;
- if you change your contact details – mobile number, email address, home address;
- if you decide to recommence your service before the end of your requested period of suspension;
- if you decide that you no longer want to remain registered.