



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Supporting Quality Childcare in Wales

**Review of the Regulations and the National
Minimum Standards for Daycare and
Childminding**

20 April 2009

melyn
Consulting

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Introduction

The National Minimum Standards for Daycare and Childminding and the associated Registration and Inspection functions have been in place relatively unchanged since 2002 and in the meantime there have been significant changes in policy, legislation and practice at all levels.

It is timely, therefore, to undertake a review. However, the National Minimum Standards for Daycare and Childminding and the associated Registration and Inspection functions can be contentious with stakeholders often being driven by differing priorities. These include childcare providers themselves who have a range of motivations and business models; the umbrella organisations who represent the various childcare sectors; local authorities with a duty to secure sufficient childcare and provide information; parents who rely on childcare to balance work and family life; employers who need childcare to support their workforce; and of course, children who are the ultimate consumers of childcare but whom traditionally have not been included in the development and design of regulation.

In November 2008, Melyn Consulting were appointed by the Welsh Assembly Government to undertake a Review of the Regulations and the National Minimum Standards for Daycare and Childminding in Wales. The overriding aim of the Review has been to effect consultation to enable those with an interest in childcare in Wales to highlight relevant issues or concerns and propose actions that might arise from such concerns or issues in relation to the regulation of early years and childcare in Wales.

In fulfilling this aim the following objectives have been met:

- Consultation with a wide range of organisations that have a direct or indirect interest in the regulation of childcare in Wales
- Provision opportunities for additional stakeholders – parents, carers, children and young people - to contribute to the Review.
- Facilitation of discussion from stakeholders around the specific issues highlighted by the Welsh Assembly Government and the Care and Social Services Inspectorate Wales (CSSIW).
- Based on consultation and discussion amongst stakeholders, provision of an independent evaluation of the proposals detailing broad costs and regulatory impact; feasibility; and options for the implementation of changes from Assembly Measure through to changes to existing regulations.

Review Process

In undertaking this Review it has been important to engage as widely as possible with the range of stakeholders to examine attitudes and opinions towards the issues that because of policy or legislative changes are inconsistent, but provide an opportunity for stakeholders to raise and discuss other proposals for change.

Consultation Questions and Guide

To enable stakeholders to contribute effectively to the Review it has been important to present the issues in a coherent and accessible format. In addition, not all stakeholders have been interested in contributing to discussion on all topics. To assist those being consulted in examining the issues, 17 key questions were drafted and published in a Consultation Guide. This was made available as a download on a bespoke website (www.childcarecymru.co.uk) and in print. In total, 700 hard copies were distributed and the on-line document was downloaded a total of 863 times. The Review was publicised through a mail-shot to all 7,000 registered childcare providers that included posters and flyers to raise awareness of the Review amongst those using childcare services.

Consultation

A range of opportunities for organisations and individuals to contribute to the Review, were presented including the following:

Information Days

Four information days across Wales (South-East, West, Mid and North Wales) were arranged to enable a wide audience to find out about the Review, understand its scope and participate in consultation. These events were primarily aimed at childcare providers, parents and carers, local voluntary and independent organisations and local government officials. Over 200 people attended these events from a wide range of stakeholder groups. From the events, detailed notes were taken regarding issues and concerns, suggested outcomes and possible actions that stakeholders would like to see. These have been used to inform the Review.

Workshops

In addition to the Information Days, Consultation Workshops were run in North and South Wales. Attendance at these events were by invitation only to representatives of the organisations that were seen by officials from Children & Young People's Strategy Division as being key stakeholders in the Review process.

While similar in format to the information days, the Workshops allowed stakeholders to examine outcomes and actions in more detail. Again, notes were taken at these events by facilitators and account of these has been made in this Review.

Consultation with Children & Young People

As the consumers of childminding and daycare services, it was important to engage children and young people in the Review. In January and February 2009 consultation with children and young people took place in a range of provision including a: playgroup, day nurseries (2), a breakfast club, an after school club and in an open access play provision. Ethical considerations ensured that:

- Parents were informed: that consultation was taking place;
- that they could choose not to allow their child be involved;
- that children could choose to be involved;
- age appropriate differentiation defined the type of activity through which consultation would take place
- age appropriate information was used to inform children of the purpose of the activities.

Consultation took place with childcare providers in attendance and as participants in each activity. All consultants had been subject to CRB checks and were not left alone with children. Responses from children and young people were recorded and have been incorporated into the Review.

Consultation with parents and carers

The views of parents and carers were gained from two focus-groups where parents were given the opportunity to discuss the consultation questions in detail. In addition, the views of parents from responses to surveys carried out in 10 local authorities in Wales as part of the 2007/2008 Childcare Sufficiency Assessments were used in both developing the consultation questions and in assessing the issues addressed in this report.

Consultation Responses

Stakeholders were invited to make formal written responses to the consultation questions either in writing to a freepost address; by email using a downloadable pro-forma, or directly via the website. In total, 56 written responses were received. Transcripts of these responses are attached as an appendix.

Reporting

This Report has been developed in response to the wide-spread consultation detailed above. It is set out under the headings used throughout the process. For each consultation question there is; a summary of the issues that were set out to inform stakeholders; further issues that were raised during the Review; and options for change. For each option, an assessment has been made of the legislative impact and the potential cost to the Welsh Assembly Government.

1. The National Minimum Standards

Consultation Question 1:

How should the National Minimum Standards be set out to support a flexible approach to childcare services and to reflect the Welsh Assembly Government's Seven Core Aims for Children & Young People?

- 1.1 Childminding and daycare for children under 8 are regulated in Wales under the *Children Act (1989)* as amended by the Care Standards Act 2000 and through *Daycare and Childminding Regulations* made by the Welsh Assembly Government. These set out how services should be registered and regulated to ensure that children are safe and well cared for. The registration and inspection of providers of childcare services is the responsibility of the *Care and Social Services Inspectorate Wales (CSSIW)* – a division of the Welsh Assembly Government - using the regulations. The *National Minimum Standards for Daycare and Childminding* underpin the regulations.
- 1.2 There is a document setting out the National Minimum Standards for each of the six services regulated by the CSSIW: Childminding, Full Daycare, Sessional Care, Out of School Care, Crèches and Open Access Play. While these types of service are the most common forms of childcare, increasingly the boundaries between them are blurred. For example, many playgroups – which are registered as ‘Sessional Care’ – are increasing their hours to provide childcare which ‘wraps-around’ part-time early education. These settings can therefore be viewed as providing ‘Full Daycare’ for which the Standards are more demanding and could be viewed as too rigid for an extended playgroup. It could be argued that the current six categories are too inflexible to support a childcare sector that needs to become more flexible in response to changing work and family life.
- 1.3 The National Minimum Standards are set out under a number of headings which focus on the suitability of settings eg. the suitability of adults caring for children; the number of children that may be cared for; the size and safety of the premises; health and hygiene practice.
- 1.4 In 2004, the Welsh Assembly Government set out *Seven Core Aims for Children and Young People*. The Seven Core Aims are now used as a framework for developing and delivering services to children and young people including the Children & Young People’s Plans that have been developed by local authorities in Wales but are not referred to by the National Minimum Standards (NMS).

Issues and Concerns

- 1.5 While stakeholders supported the intention of the Seven Core Aims the majority view was that NMS should not be written under headings of the Seven Core Aims because they were being interpreted on a local basis, in some cases with proposed standards that would add further layers on non-standardised interpretation thus introducing yet further complication.
- 1.6 In addition, as childcare services have evolved it is reported that current regulation and NMS are failing to reflect the type of provision offered. Those consulted clearly articulated concerns that, as childcare services have evolved from demand led services to meet the needs of families and work life patterns, the current six categories have proved to be too inflexible to guide the work of the sector.
- 1.7 Given the reported reliance of providers upon NMS it is unsurprising to find that many representing sector groups reported that service providers felt ill-informed about government strategy, including The Seven Core Aims. Whilst some respondents felt that the importance of the Seven Core Aims was sufficient to warrant a wholesale review of NMS and offer a revised format under headings of the Seven Core Aims reflecting the child's needs, the majority view was that such a move would be unnecessary if the purpose of NMS was retained; that is to guide and direct providers. The significant majority of respondents reported that NMS should be retained in a similar format, written to reflect the centrality of a child focus in services.
- 1.8 The format of NMS was clearly important to all respondents. Various suggestions were offered regarding the formatting of revised standards with suggestions including: increased information about WAG policy that informs standards, separate and increased number of standards differentiating for each type of setting, greater efficiency in management of evidencing standards, standards that better reflect practice and the use of NMS to close current loopholes to ensure that childcare standards reflect an expectation of parity of provision for the child rather than differentiating expectation according to the difficulties some providers have in meeting standards. Despite recognising associated problems and potential closure of services that could result from increased demands the significant majority of respondents considered that this was the short term outcome of retaining parity of provision for all children. Updated NMS were considered central to this aim with respondents expressing a wish to extend and improve current NMS by:
 1. Improving access to information through the website and an improved document
 2. Clear definitions

3. Clarity about timely, updated information
 4. Increased detail about implementation and outcome
 5. Further clarity about requirements and removal of potential and actual ambiguity
 6. Improved management of documentation
 7. Increased consistency and parity of expectation during inspection
 8. Increased reference to the expected impact of services on the child and family
- 1.9 Respondents expressed considerable concern that there is a lack of clarity about what constitutes childcare and that a definition of childcare is assumed contributing to ambiguity about provision and services, particularly given the increased range and breadth of services available.
- 1.10 The following definition encompasses the current range of provision, its simplicity avoids issues of paid and unpaid work, education and play:

'...childcare is provision during which the needs of the child (care, education and play) are delegated to and accepted, by a third party in the absence of the parent.'

- 1.11 What children articulated was not a need for more standards but perhaps greater focus upon what was implicit within them. The 'how' standards were employed was important to children. Indeed, much of what children considered important could be located, with a particular interpretation, in current standards. Where children identified a need in provision it often reflected the importance of detail directing what should be regarded as good practice within standards. An example being the management of transition into childcare provision. There is no doubt that transitions are widely considered an important aspect of childcare provision that involves parents yet standards includes= no detail that influences practical management of transitions. One child described how it was important to know *'when mummy comes to get me'* while another described going into school *'being better than going into after school'* because *'I go with mum. After school I just go by myself, on my own 'til I get into it.'* To this child a secure adult led handover between provision was important to a personal feeling of security.

Stakeholder Recommendations

- 1.12 The consensus of feedback is that NMS require updating beyond simple interpretation of current Regulatory requirements. Providers are clear that there is a need for NMS that reflects the nature of current childcare provision,

underpinned by a clear definition of what constitutes childcare and associated and incorporated activities such as play and education in the context of settings. Whilst recognising the potential complicated and expensive financial repercussions of proposed change, respondents were clear that change is necessary with a view to keeping the experiences and needs of the child as the central focus of childcare services. Unanimously, respondents are clear that they value and wish to retain NMS.

1.13 Having learned from the implementation of NMS respondents felt improvements could be made and welcomed the opportunity to offer suggestions for change. Indeed, it is clear that it is the success of previous NMS that has resulted in greater demand from revised NMS in terms of the purpose of NMS, their utilisation and their implementation. All respondents reported that they would like NMS to always:

1. Be true to 'minimum standard' while incorporating the child's need to see good practice explicitly recorded so that expectation within standards are
2. Provide a consistent currency of interpretation of NMS
3. Reflect the type of provision offered
4. Be clear and unambiguous in interpretation of requirements
5. Refer to regulation and broader standards that inform childcare provision
6. Be concise and user friendly
7. Be directly linked to expectations of/and outcomes
8. Be inspected against with consistent flexibility that is standardised at all levels (providers and inspectors) and across Wales

Options for change

1.14 The following options have been identified prioritised according by the number of responses and strength of feeling expressed in consultation. The priorities largely reflect a scale of increased to lesser access to detail of information and referencing to broader policy that impact upon standards. The preferred options being the most demanding to achieve, utilising similar resources to those required in options four and five but carrying greater short term expense that is potentially offset by medium to long term demands on services and dissatisfaction. Perhaps most importantly, Option one allows for incorporating the necessary detail that matters to children.

Option One

Retain the current format of NMS guidance under 'Standard' headings with a significant increase in detail that is written to reflect a child's needs. This detail would clearly outline what is required under each heading and include reference to broader policy (including Seven Core Aims) where appropriate for the purpose of informing standards. The Regulations that apply to each standard should be written clearly into the document, perhaps in a text box.

This option offers providers a 'One stop' overarching, detailed guidance document that serves to educate, inform and retain currency giving providers confidence in working to and beyond standardised practice. It would be expensive to achieve in that it would require a staffing and time resource and associated printing and design. Respondents recognised that this option reflected a 'wish list' but also that such investment would be worthwhile and could perhaps be offset by ongoing clarity in reduced demands on CSSIW time in the medium and longer term.

Additional improvements should include an improved 'Minimum click to information' website design, annexing of WAG policy documents where appropriate to meeting standards, a foreword from the minister, a statement of the link between regulation and NMS, a statement to outline the inspection strategy and clear information about updates to NMS.

Option Two

The NMS should be re-written as core standards that should reflect common requirements for all types of provision with appendices that record requirements that differ according to type of provision. This option has the advantage of recognising commonality between provision and of being environmentally friendly in that each setting would need to be provided with only with the documents for which they are registered.

Option Three

The core document should be written under 'Standard' headings incorporating standards that apply to all settings in the main paragraphs, supplemented by additional requirements for each setting type written under the core/common requirements. The advantage to this format is the simplicity in accessibility of all information in one place and the security it offers to providers.

Option Four

Retain the current format and update standards to meet regulatory requirements and current types of provision. The current format is familiar and understood by providers.

Option Five

A very small minority of stakeholders favour a complete change of format written to reflect the Seven Core Aims. However, this suggestion was opposed by some concerned that Local Authorities are interpreting Seven Core Aims into locally and regional standards which was considered a further complication. Respondents reported concern that such an approach introduced further potential for non-standard interpretation thus exacerbating rather than reducing current problems.

Options Summary

Option	Legislative Impact	Resource Impact
1 Retain the current format of NMS guidance under 'Standard' headings but link to regulations and significantly improve presentation	Redraft NMS	All of the options presented require a significant re-drafting of the National Minimum Standards. This is likely to require significant input from CSSIW and WAG officials. Should the task of re-drafting be put to tender, it is likely to cost IRO £40,000.
2 NMS should be re-written as core standards that should reflect common requirements for all types of provision with appendices that record requirements that differ according to type of provision.	Redraft NMS	
3 Core document presented under 'Standard' headings incorporating standards that apply to all with settings in the main paragraphs, supplemented by additional requirements for each setting type written under the core/common requirements.	Redraft NMS	
4 Retain the current format and update standards to meet regulatory requirements and current types of provision.	Redraft NMS	
5 NMS re-written under the headings of the Seven Core Aims	Redraft NMS	

2. Regulation of Daycare & Childminding

Consultation Question 2

Do you think that childcare provided for less than 2 hours and / or 6 days a year should be regulated?

- 2.1 The Care and Social Services Inspectorate Wales (CSSIW) are responsible for regulating day care services for children who are under eight. These services currently include child-minders, playgroups, crèches, day nurseries, out of school clubs and play schemes. It does not include nannies and au pairs¹.
- 2.2 Providers of daycare for children must be registered if they provide care for a child who is under eight for more than two hours each day or on more than 6 days in any year and for reward. CSSIW decides who can provide childcare services, and then inspect them to make sure that the regulations are met. They also investigate complaints that have not been resolved within the setting.
- 2.3 Requiring providers of daycare for children to register with CSSIW ensures that services meet minimum standards. However, the law allows those providing services for less than 2 hours the freedom to operate outside of regulation without any requirement to register. On one hand, this means that ad-hoc or informal groups – such as Sunday schools, Cub Scout or Brownie packs – can provide community services without having to register and therefore comply with the regulations. On the other hand, some groups use the freedom to provide daycare services – such as after school care, or school-run wrap-around care – for less than 2 hours each day without having to register and comply with the regulations. Similarly, any type of daycare that operates for 6 days or less in any one year does not have to be registered.
- 2.4 From October 2009 it will be a criminal offence for any employer to employ a person who is deemed unsuitable to work with any vulnerable group – including children. Because this new law should ensure that anyone who is employed in childcare – registered or unregistered- is deemed suitable to do so it could be argued that the safety of children in unregistered childcare will be less of an issue.

Issues and Concerns

- 2.5 Most stakeholders were aware that from October 2009 it will be a criminal offence for any employer to employ a person who is deemed unsuitable to work with any vulnerable group – including children - and therefore the issue of child protection was seen to fall largely outside of the issues arising from unregulated services.

¹ Nannies and Au Pairs may have basic checks undertaken through the Approved Homecarer Scheme in Wales.

- 2.6 The majority of stakeholders felt that failure to register all childcare provision does not sit well with the Welsh Assembly Governments *Seven Core Aims* and the desire for children to be treated with equal consideration. The view of respondents is that all children, no matter where they live or how abundant local provision is or for how long a period of time they attend a setting should receive parity of provision. Parity of regulation of childcare and associated services was seen as imperative to ensuring parity of children's services, as suggested by one respondent, a car needs an MOT no matter how far it was to be driven. The desire to see '*minimum standards applied to all provision*' was a view held equally by those providers who are currently regulated and inspected and those that are not. The opportunity to 'close loopholes' that allow children to attend a range of consecutive provision was regarded as an additional benefit of wider regulation.
- 2.7 There was some concern expressed regarding the impact of regulation and inspection of all childcare services on an already stretched inspection service and equal concern regarding the impact of registration and regulation upon community childcare provision. However, despite acknowledging these concerns the overall consensus from consultation was that all childcare should be regulated. At the same time it was also proposed that the review of NMS offered an opportunity to increase categories of childcare provision and to revise management of inspection according to type of provision. For example, a 'lighter touch approach' to regulation and inspection may be appropriate to some provision.
- 2.8 Concern regarding leisure activities was twofold. On one hand, the term '*leisure*' is currently used to avoid registration - for example, by some summer holiday clubs offering full day provision in the absence of a parent. On the other hand, regulation of all services might unintentionally encompass weekly leisure groups such as Brownies and Sunday schools. Some stakeholders felt that all services where children are being cared for by adults who were not their parents should be regulated given that quality services – such as the scouting / guiding movement - already have quality practices and procedures that could be used as a basis for regulation.

Stakeholder Recommendations

- 2.9 There was a broad consensus that would like to see childcare provided for less than 2 hours a day or 6 days a year regulated in the interest of securing better outcomes for children. '*Every child deserves at least the minimum standards*' in parity of provision and quality of services to children. Stakeholders raised concerns that children attending a succession of services offering less than 2 hours were being disadvantaged. This issue was also apparent in consultation with children who highlighted the importance of consistency and management of transitions into and across provision.

2.10 A minority of those contributing to the Review did not consider that it was necessary to regulate but this view was driven by pragmatic issues such as the impact on CSSIW resources and the loss of leisure and education services as an unintended consequence of poorly framed legislation and regulations.

Options for change

Option One

Regulate, register and inspect all childcare provision equally. While this was the most common action suggested by stakeholders, it relies on a clear definition of childcare being developed that avoided unintended consequences.

Option Two

Retain the current regulatory requirements. Given the strength of response with regard to parity of provision, retaining the status quo is unlikely to be a popular option across the sector and amongst parents and carers.

Option Three

Regulate, register and inspect to 'lighter touch' standards for some types of provision. Given the model developed in England, few stakeholders were keen to see a similar system developed in Wales.

Option Four

Some stakeholders would prefer to see the introduction of voluntary register offering best practice guidance for providers including leisure groups. However, many feel that this is unlikely to have the desired impact because the requirement would carry little legal implication should providers choose not to register provision.

Options Summary

Option	Legislative Impact	Resource Impact
1 Regulate, register and inspect all childcare provision equally	Amendments to the primary legislation - Children Act (1989)	This option would inevitably result in additional work for CSSIW that would require additional funding on an on-going basis. The extent of the additional resource could be either minimal or quite considerable given the extent of the changes.
2 Retain the current regulatory requirements	None	None
3 Regulate, register and inspect to 'lighter touch' standards for some types of provision	Amendments to the primary legislation - Children Act (1989)	Some additional work for CSSIW plus set-up costs for the scheme. The cost of the legislative process should also be accounted for.

4	Introduction of voluntary register	Revisions to NMS	Ibid
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3. Childcare for Older Children

Consultation Question 3

Should there be a system of compulsory or voluntary registration or approval of childcare and other services for children and young people aged 8 to 14 years?

- 3.1 Current childcare regulations apply only to services that cater for children under the age of eight years. Settings that cater only for children aged 8 to 14 years are not required to register nor are they able to do so voluntarily. Although there are legal duties to safeguard children (including the new Vetting and Barring system in place from October 2009) there are no quality assurances, limitations or statutory guidelines for childcare or play services that cater only for older children.
- 3.2 Parents using services that only cater for children over 8 years are currently unable to gain financial support through the Working Tax Credit childcare element or tax and National Insurance contribution savings on employer supported childcare or childcare vouchers². This will become more of an issue in light of planned changes to the benefits system. From October 2008, parents with a youngest child aged 12 were no longer able to claim Income Support solely on the grounds of being a lone parent. From October 2009 this will be extended to lone parents with a youngest child aged 10 and then from aged 7 or over from October 2010. It is likely that more lone parents with older children will be looking for work but they may face problems in being able to pay for childcare if there is no recognised registration or approval system in place for settings catering just for over 8's.
- 3.3 On the other hand, it is likely that if regulations similar to those for under 8's were introduced many services for over 8's would close.

Issues and Concerns

- 3.4 In the first instance, stakeholders felt that currently, the regulations are out of step with a range of other legislation – such as the Childcare Act (2006) – policy such as the UNCRC (which defines childhood as up to 18) and with local childcare strategies as set out in the Single Children & Young People's Plans. Parents, providers and other stakeholders agree that the protection of children needs to be foremost and that the current situation is untenable.
- 3.5 Some local authority representatives voiced real concerns over the quality of some services, which at the moment fall outside of regulation because they cater for only over-eights.

² The tax authorities insist that credits for childcare can only be paid to regulated or approved childcare providers. This is a UK-wide position which could not easily be altered to a unique situation in Wales.

- 3.6 Many of those consulted – but particularly those from Job Centre Plus and Genesis – said that the current ineligibility of settings catering for over 8’s was an increasing problem for lone parents because of Welfare Reform. However, those within the sector felt that it should be a child-centred approach that should be of prime concern and that regulation for the sake of meeting the demands of the tax system should be avoided.
- 3.7 However, a minority voiced concerns that lots of provision would be lost if services catering for a wider age-range were regulated. If services for older children are to be regulated, there is also concern that provision could be lost because of the time it takes to register. Regulation could restrict spontaneous play services from developing.
- 3.8 Most stakeholders recognised that regulation of services for older children (11+) needed careful consideration so as not create restrictive services that would inevitably put-off young people from using them. In addition there needs to be some careful thought as to the difference between childcare and out of school hours learning.

Stakeholder Recommendations

- 3.9 While almost all those consulted feel that the current situation is unacceptable, there was no clear agreement about how to move forward. While some stakeholders feel that a voluntary system of regulation would suffice for services for children aged 8 and over, others feel that all services for children under 11 need to be regulated with a voluntary option for services for children of secondary school age. A number of stakeholders – including Clybiau Plant Cymru Kids’ Clubs and Play Wales – made it clear that they would like to see regulation of all childcare and play services for children at least up to the age of 14. However, along with many other respondents they highlighted the need for the National Minimum Standards to be able to differentiate between services for younger and older children – reflecting their growing sense of independence and responsibility – and between childcare and play services. It was suggested that the NMS should be very minimal when dealing with services for older children – focusing on protecting children from harm rather than the minutiae of operational detail. The quality assurance scheme currently in development should be the tool to support service development.
- 3.10 The implementation of any changes were of concern to those representing childcare services, in terms of the speed of implementation of any changes. Any change needs to be phased in slowly, perhaps with a lighter-touch or voluntary registration scheme in place initially followed by full regulation at a later stage. The capacity of regulators to be able to deal with additional registrations and inspections was also a concern along with their experience and ability to deal with a wide range of services for older children.

Options for change

3.11 A large number of options for change were proposed by those consulted, but the following were the most commonly expressed and here, have been listed in order of popularity.

Option 1

Regulation of all childcare and play services that cater for children up to the age of 14 years (with a view to raising this age at a later date if appropriate) requiring compulsory registration to be phased in over a period of three to five years supported by a relevant set of NMS and support for Quality Assurance.

Option 2

Regulation of all childcare and play services that cater for children up to the age of 11 years requiring compulsory registration. Childcare should be clearly defined so that services for children of secondary school age could voluntarily register to allow parents to claim tax credits.

Option 3

Regulation of all childcare and play services that cater for children up to the age of 18 years requiring compulsory registration but with a relevant set of NMS.

Options Summary

Option	Legislative Impact	Resource Impact
1 Regulation of all childcare and play services that cater for children up to the age of 14 years	Amendments to the primary legislation - Children Act (1989), revision of Regulations (2002) NMS	This option would inevitably result in additional work for CSSIW that would require additional funding on an on-going basis. This is likely to be IRO of an additional 10% to current budget for CSSIW childcare inspections.
2 Regulation of all childcare and play services that cater for children up to the age of 11 years with voluntary regulation for settings catering for 11 to 14's	Amendments to the primary legislation - Children Act (1989), revision of Regulations (2002) NMS	A slightly lower impact than Option 1, but the costs of setting up a voluntary scheme would be IRO £35k
3 Regulation of all childcare and play services that cater for children up to the age of 18 years	Amendments to the primary legislation - Children Act (1989), revision of Regulations (2002) NMS	Significant resources implication that would require an increase of up to a third in the CSSIW childcare inspection budget.

4. Nanny and Babysitting Agencies

Consultation Question 4

Should nanny or babysitting agencies be regulated?

- 4.1 The law currently makes it clear that if children are cared for within their own home the person providing the care does not have to register as a childminder. The law specifically excludes nannies that are employed to work mainly within the home of the person employing them. This still applies if parents from two families share a nanny as long as the care takes place in the home of one of them. It is argued that there is no need to regulate in this area, as parents should have the freedom to employ whoever they choose to care for their children in their own home – including nannies and babysitters and can use the *Childcare Approval Scheme Wales* to undertake basic checks on Nannies if they want to. While parents are responsible for checking the suitability or qualifications of a nanny, many parents use nanny agencies that will usually ensure that the nanny is suitably qualified or experienced. Nanny agencies are not currently regulated and those working for them do not necessarily have to undergo the same checks and work to the same standards as for example, a regulated childminder. This contrasts with the situation in domiciliary care agencies that provide carers to go into the homes of sometimes very vulnerable people. These agencies are regulated by CSSIW with a set of minimum standards that must be met including employment checks, training, qualifications and conduct.

Issues and Concerns

- 4.2 Consultation respondents were firm in their response, raising concern that care agencies are regulated and that those offering services to families of children, an equally vulnerable group, are not. Despite this view, there is some tension with regard to the duty to protect children and to allow parents to make choices on behalf of their children. The majority view was that parents employing a nanny directly should be responsible for their own decision making while those seeking additional support through agencies should be regarded differently.
- 4.3 The reason for this two-tier expectation was that parents were regarded as having the right to choose childcare independently and that those seeking agency support were clearly expecting a service that offered reliable standards and additional safeguards. Respondents were concerned that the methods employed by agencies to market services were confusing and sometimes, albeit unintentionally, misleading. It was reported that the publicity around childcare often linked with CRB requirements led to users of services making direct links between the two. It was strongly considered that this could result in parents believing that safeguards associated with inspection are currently

synonymous with CRB checks. In short, it was felt that messages in the public domain about childcare regulation and inspection could lead parents into making potentially misinformed and unsafe choices with regard to childcare arrangements. Indeed, many respondents expressed concern that they were themselves inadequately educated on this matter and thought agencies were regulated. In turn, it was strongly felt that parents were likely to be equally and/or less informed.

Stakeholder Recommendations

- 4.4 A majority of those consulted felt that agencies should be regulated. Just one respondent suggested that this should not be the case but that parents should be informed about their responsibilities with regard to choosing childcare.

Options for change

- 4.5 Following consultation it would appear that change is required to safeguard practice and to make a clear distinction, should there be one, between care and childcare agencies.

Option 1

Agencies providing home childcarers (nannies) should be regulated introducing parity of care with adult provision.

Option 2

Do not regulate agencies but increase information for parents to inform them about childcare choices and associated regulation – its depth and its associated inspection regime.

Options Summary

Option		Legislative Impact	Resource Impact
1	Regulate nanny agencies	Amendment to the Domiciliary Care Agencies (Wales) Regulations 2004	The number of agencies that would be required to register is estimated to be relatively small with some already registered under the domiciliary care regulations.
2	Maintain status quo, but increase information to parents.	None	None

5. Family Members

Consultation Question 5

Should there be a system in place that allows family members to be paid for providing childcare so that parents can claim against the cost?

- 5.1 The law specifically states that family members of a child; people with parental responsibility for a child or foster carers do not act as child carers for the purposes of regulation.
- 5.2 There has traditionally been a strong argument that authorities should not get involved in how care is provided within families aside from the basic law on safeguarding and protecting children from harm.
- 5.3 Many children are cared for informally by family members – such as grandparents – outside of their own home. While most are unpaid, parents are free to pay relatives³ for looking after their children. However if parents choose to pay relatives for childcare they cannot claim Working Tax Credit childcare element or tax and National Insurance contribution savings on employer supported childcare or childcare vouchers to subsidise the cost⁴. A family member cannot be registered as a childminder to care for a specific, related child, although they can register as a childminder to provide childcare that would be accessible to all children. Relatives are also ineligible to apply for financial support through the *Childcare Approval Scheme Wales*.

Issues and Concerns

- 5.4 Parents said very clearly that their choice is currently limited if they want to receive support to pay for childcare. However, other stakeholders felt that regulating family members was politically unacceptable and could cause problems within families as relationships were formalised. They also felt that a system that allowed family members to be paid for childcare could be easily abused.
- 5.5 Stakeholders recognised that while family members can already register as childminders the current system can encourage them to be dishonest by insisting that they would be prepared to cater for children outside the family. However, while a minority of those consulted would like to see a change to the regulations to make it easier for family members to become childminders, the majority felt that no change was required as the current situation ensures quality and protects children.

³ A relative means a grandparent, aunt, uncle, brother or sister of a child, of full or half blood, or by marriage or civil partnership.

⁴ The tax authorities insist that credits for childcare can only be paid to regulated or approved childcare providers. This is a UK-wide position which could not easily be altered to a unique situation in Wales.

Options for change

5.6 This subject generated a great deal of debate and it was recognised there were some fundamental issues around the role of the state in everyday life that required a much wider debate. On balance however, there was no appetite for any significant change on this issue.

Option 1

No change to the current situation.

Option 2

Family members should be allowed into the Home Childcare Approval Scheme or a new category of 'home childminder' be created but this should be piloted or researched to assess any impact on the formal sector.

Option 3

The current NMS requirement that all childminders must be prepared to accept any child (as part of an equal opportunities policy) should be amended to enable family members who only want to care for their relatives to register honestly.

Options Summary

Option	Legislative Impact	Resource Impact
1 No change	None	None
2 Family members should be allowed into the Home Childcare Approval Scheme or a new category of 'home childminder' be created	Home Childcare Approval Scheme contract amendment Amendment to HMRC regulations	Limited official time
3 Amend NMS to enable 'honest' registration by family members as childminders	Amendment of NMS	This could cause some increase in childminder registrations and therefore additional CSSIW workload

6. Qualification Levels

Consultation Question 6

Are the current qualification requirements of the National Minimum Standards appropriate?

- 6.1 In daycare settings the National Minimum Standards state that the person in charge of a childcare setting should hold a recognised level 3 qualification and a proportion of all the staff should be qualified to level 2 (80% in daycare settings; 50% in crèches, sessional care settings and out of school and holiday clubs).
- 6.2 There is now clear evidence that quality childcare in the early years can lead to improved outcomes for children and research has found that the quality of care is linked to the proportion of workers in a setting with qualifications – particularly at level 3 and above. Parents are also concerned that staff are qualified and will make judgements about the quality of care based on the levels of qualified staff.
- 6.3 However, because of the large number of small private and voluntary organisations delivering childcare services in Wales resources for training from within the sector are limited and the availability of qualification training for early years, childcare and playwork is not consistent across Wales. Low pay is also a factor making a childcare career less attractive to qualified and especially highly qualified workers.

Issues and Concerns

- 6.4 This subject generated a lot of debate with the regulatory issues interweaved with wider policy and strategy. While some of the issues can be addressed as part of this Review, others are being examined as part of the Early Years & Childcare Workforce Strategy.
- 6.5 It is felt that the sector is still in a transitional phase, where the minority of workers do not subscribe to changes in ethos – that now specialised rigorous qualifications should accompany experience. Workers more recently moving into the field are more likely to subscribe to the culture of continuing professional development (CPD), and evidencing knowledge and experience with qualifications.
- 6.6 The sector is inadequately and unevenly funded, and standards cannot effectively be raised until a high quality training infrastructure is in place, with incentives for staff to achieve higher qualifications. There is a lack of job security and professional status in childcare and playwork sector.

“Creative routes to qualification, which build on prior learning and are flexible enough to meet the needs of the workforce will be essential. ... The current qualification requirements of the National Minimum Standards are not appropriate if the childcare sector is to raise standards. Encouragement to achieve higher level qualifications and extended knowledge and skills base will need to be supported by funding in terms of training for qualifications and the time away from the workplace and support to enable the balance of pay and reward to be equitable with other roles across children’s services.”

(NDNA)

- 6.7 Concern was expressed by several respondents that CSSIW were not consistent in the staffing/qualifications standards required in childcare and play settings.
- 6.8 Many of those consulted said that the migration of qualified staff to both Foundation Phase and Flying Start have drained staff from childcare settings, attracted by better salaries and job security.
- 6.9 Qualifying new staff or raising levels of qualifications of existing staff is hampered by a lack of suitable courses (especially at Level 3 and Level 4) on offer both in childcare and playwork, throughout Wales.

“There must be a CPD framework in place to help people to update their skills and competences to match a current level.”

(Statutory Body)

“Level 3 training for playworkers is few and far between and there needs to be government commitment to ensure we have fully qualified playwork staff in Wales.”

(Gwent Association of Voluntary Organisations Play Service)

- 6.10 Concern was expressed that colleges offering childcare courses were not ‘in touch’ with the industry and there needs to be consistency across the different training routes. In particular it is felt that there is a lack of consistency between Level 2 and Level 3 qualifications – from both vocational training and college-based courses. People feel that there are too many current qualifications, especially at Level 2. Many of those qualified to Level 3 show a lack of knowledge about child development and some childcare courses do not give sufficient emphasis to working with babies (0-1)

“If you want to work with babies, you should receive accredited training to do so.”

(Early Years and Childcare Coordinator)

Stakeholder Recommendations

Staffing of day care nurseries

- 6.11 The current advisory level of 80% qualified at Level 2 in daycare, should be raised to 100% at Level 2 or working towards Level 2. Day nurseries represented in consultations indicated that they would like to encourage their

Level 3 staff to go on to a practice-based higher qualification (an appropriate Level 4 or Foundation degree), but currently there is little funding available to support this. Furthermore, people in the sector feel that a Level 4 or Level 5 management qualification should be required for nursery managers as a minimum. However, there is concern as to whether regulation is the appropriate tool to raise qualification standards in the sector given that there is little additional financial incentive for practitioners to progress.

Staffing of sessional care settings, crèches, OSCs and holiday clubs

- 6.12 There is general concern that staff are being employed in settings for which they are not qualified, for example, play workers in early years settings - on the basis that they have attained a particular level.

“The present requirements are overly ambiguous, enabling staff with qualifications that may for example early years qualifications which are appropriate for work on settings such as a children’s nursery, to be regarded as qualified to work in play settings. A joint statement has been drafted by SkillsActive and Skills for Care and Development in an attempt to clarify this situation, however there is little awareness of this document and there remains a perceived ambiguity regarding playworkers working in out of school settings.”

(Play Wales)

- 6.13 Some respondents felt there is a need to retain the flexibility allowed by the 50% regulation in sessional settings so that parents who are temporarily working in the sector or volunteering can continue to do so. It should be recognised that sessional care settings often provide a unique way for people without formal qualifications but with transferable skills to enter the childcare workforce.

- 6.14 There seem to be practical difficulties of staffing to current qualification requirements in after school clubs, especially in bi-lingual and rural areas where training is difficult to access. *“Clubs don’t register, because they can’t get qualified staff.”* In addition, staff do not necessarily want to take courses – related to the low status / low pay perception of the sector.

- 6.15 Out of school and sessional care settings all cited the difficulty of running setting if leader (Level 3) is off for any reason – they need contingency plans and some flexibility.

“If only two members of staff are employed, however, the deputy should qualify to Level 3 for contingency purposes.”

(Clybiau Plant Cymru)

Childminders

- 6.16 It is generally felt that registered childminders should be required to be trained to Level 3, as a minimum, since they are in charge of a childcare setting. It is

an area of concern that parents may not be aware that they currently do not need to be trained to this level. In their response, the National Childminding Association supported this push for change and suggested that it should be a requirement for all childminders to attain a Level 3 qualification within 5 years of registration.

Options for change

- 6.17 The majority expressed the view that it is essential to improve the quality of childcare, by raising the standard of delivery and aiming for higher specialised qualifications in the field. “Children are entitled to the best we can offer.”
- 6.18 In terms of the National Minimum Standards, qualification requirements need to be set at not only at an appropriate and aspirational level, but also at one which is entirely specific to the relevant skills sector.

Option 1

National Minimum Standards to require qualifications that are appropriate to the type of setting (eg. early years or playwork) and to the age-group catered for.

In particular, people wishing to work with babies should have a specialised accredited training (available in units of CCLD) in order to do this with assured competence.

Option 2

Raise the current qualification requirements of the National Minimum Standards in order to develop a high quality workforce with specialisms and suitable qualifications:

- Attainment or progress towards an appropriate higher level (Level 4+) qualification to be a requirement for leaders and managers of day care settings as a first step towards a graduate-led workforce.
- Level 3 is an appropriate qualification for leading sessional groups but there should be a minimum of two Level 3 members of staff for each setting, to allow for absences.
- To raise the National Minimum Standard qualifications for registered childminders to Level 3, to be achieved within a set period of time (5 years suggested by NCMA).
- Regulations should be used to raise the proportion of staff with appropriate Level 2 in all settings. However, to retain the ability of sessional and out of school settings to engage unqualified staff and volunteers there needs to be some flexibility within the regulatory system. This should require

settings to show that staff are engaged in training towards an appropriate qualification, or at the least, have undertaken an appropriate induction course and are receiving professional development training.

Option 3

Continuing professional development (CPD) to be embedded in the National Minimum Standards, so that this becomes part of the inspection framework for childcare and playwork. In this way, all aspects of CPD will become an important aspect of running an organisation and staff's ongoing progress will be acknowledged.

Options Summary

Option	Legislative Impact	Resource Impact
<p>1 National Minimum Standards to require qualifications that are appropriate to the type of setting (eg. early years or playwork) and to the age-group catered for.</p> <p>In particular, people wishing to work with babies should have a specialised accredited training</p>	<p>Amendment of NMS</p>	<p>These options will inevitably impact on demand for training across the sector that will need to be met with additional resources from WAG.</p>
<p>2 To raise qualification requirements set by the NMS:</p> <p>a) Level 4 in day care settings for leadership positions</p> <p>b) Level 3 as a minimum for leading sessional settings but two staff members to be trained to this level (within time frame)</p> <p>c) Level 3 as a minimum for registered childminders (within time frame)</p> <p>d) Raise the proportion of Level 2 staff to in all settings</p>	<p>Amendment of NMS</p>	<p>There is currently a shortage of quality training on offer across Wales that meets the current needs of the sector. Additional regulatory demands will exacerbate this situation.</p>
<p>3 Embed CPD within the wording of the NMS, so that it becomes part of the inspection framework</p>	<p>Amendment of NMS</p>	<p>Will need CPD frameworks to be developed and supported across the sector. May require additional resources at local partnership level to support the sector.</p>

7. Appropriate Qualifications

Consultation Question 7

How should childcare providers decide which qualifications are appropriate to enable them to meet the National Minimum Standards?

- 7.1 The National Minimum Standards refer to qualifications as being acceptable if they appear on the now obsolete “ACCAC National Qualifications Framework for Early Years Education, Childcare and Playwork”. There is therefore an urgent need to clarify which qualifications should be appropriate and acceptable for a number of reasons:
- To enable practitioners to make choices about which qualification to study for
 - To help employers in recruitment and training decisions
 - To guide CSSIW inspectors in their inspections
 - To ensure that training providers are putting on courses that are going to equip workers with the right tools for employment
- 7.2 The Care Council for Wales is the body with responsibility for the early years and childcare workforce, while Play Wales works with Skills Active to oversee playwork qualifications in Wales.

Issues and Concerns

- 7.3 Of those consulted, there was general agreement that it is extremely difficult for childcare providers to make sense of the many qualifications that exist for childcare and playwork at different levels. Currently employers tend to learn about qualifications by experience, rather than objective criteria. Several instances were cited of CSSIW being unsure about appropriate qualifications.
- 7.4 The majority thought that the framework currently being devised by Care Council for Wales will be a very necessary and useful tool for understanding different childcare and playwork qualifications, but was not the whole solution.
- 7.5 There was also concern expressed that employees with ‘old’ qualifications are not necessarily keeping their practice up to date, especially at Level 3 and that providers are not necessarily aware of how to do this. There is also little funding available to support their efforts.

“At present there is no available list of suitable qualifications that are approved by the sector which would give clear guidance to laypersons on the management committees

of childcare provisions. ... The importance of looking in detail at previous experience when recruiting staff should also be noted."

(Mudiad Ysgolion Meithrin)

Stakeholder Recommendations

- 7.6 The majority of respondents felt that childcare / playwork providers, course / training providers, umbrella organisations and inspectors should all be able to access up to date information about past and present qualifications, not only for their own use, but also to advise others.
- 7.7 Employers would like guidance on all the relevant childcare qualifications which show what level people are qualified to. This would then make the recruiting process easier as at present, there are too many qualifications to choose from making it hard to compare candidates and make the best recruitment decision.

"We recommend that the Play Wales and the Sector Skills Councils (the Care Council for Wales, and SkillsActive) be given responsibility for drawing up qualification frameworks that clarify the appropriate qualifications for each type of setting. It should be noted that whilst separately developed by each SSC, the frameworks should be complementary and always considered together to ensure there is no further confusion around which qualifications are suitable for working in each setting."

(Bishopston Play Association)

"It is also recommended that historic qualifications should form a component of the information given to clarify past qualifications that are still relevant to the sector, with potential recommendations regarding the period of time before workers should undertake CPD learning to update their knowledge."

(Play Wales)

"Accredited Continuing Professional Development courses could be identified so that workers with 'old' predecessor qualifications can take the opportunity to update their knowledge."

(Clybiau Plant Cymru Kids' Clubs)

Options for change

- 7.8 Clarity is needed for providers to make appropriate decisions about prospective employees, and career pathways for those already in employment. In order for childcare providers and inspectors to meet the National Minimum Standards effectively, clear qualification frameworks from both the play and childcare sectors are needed, showing transitional awards and with guidelines for continuing professional development.

Option 1

One framework of current and qualifications from the different skills sectors should be presented;

- to include transitional awards between skills sectors;

- to set out tools and guidance to support continuing professional development.

Option 2

Separate qualification frameworks for childcare and play to be developed giving detail about the qualifications (what they have covered and how much work experience has been undertaken).

Supplementary guidance to the frameworks is needed containing information about predecessor qualifications with guidance on how employers should assess their validity along with an assessment of CPD. Lists of current and predecessor qualifications should be available as an up-to-date web-based database.

Option 3

Develop an individual development “passport” which would be portable and transferable throughout the sector recording qualifications and other training and development. CPD should become a requirement within the National Minimum Standards, and part of the inspection framework (See Question 6, option 3).

Options Summary

Option	Legislative Impact	Resource Impact
1 One framework of current and historic qualifications from the different skills sectors should be presented	None	Requirement for the relevant SSC's to work together to develop supporting guidance.
2 Separate qualification frameworks for childcare and play to be developed giving detail about the qualifications (what they have covered and how much work experience has been undertaken), as well as information about past qualifications	None	This work is already being taken forward but will require coordination from WAG to ensure that the tools are fit for regulatory purposes and updates are embedded within SSC contracts.
3 Develop an individual development “passport” which would be portable and transferable throughout the sector recording qualifications and other training and development. CPD should become a requirement within the National Minimum Standards	None	

8. Qualifications for settings operating for short periods

Consultation Question 8

Should there be changes to the National Minimum Standards to allow some discretion in the qualification requirements for holiday and play schemes, or to revise the qualification requirements for specific settings?

- 8.1 Where holiday care clubs or playschemes are provided for only short periods per year – for example holiday periods only – CSSIW will continue to register settings where the qualifications levels do not meet the National Minimum Standards until 2011. This reflects the difficulty of providing training to seasonal workers who are often only employed for short periods. It is argued that if the Standards were interpreted strictly, many schemes would not be able to operate resulting in a lack of provision to support working parents during school holidays, and the loss of valuable play opportunities for children.

Issues and Concerns

- 8.2 Generally, the playwork sector feels that the new P3 course (level 2) will achieve the flexibility needed for this group, being accredited in bite-sized modules.

“Most of our seasonal playworkers, employed on short-term playschemes, return to our playscheme for several years running; we therefore recommend that playworkers employed by short term schemes be expected to gain a Level 2 Award in their first year of employment, a Level 2 Certificate in their second year and a Diploma in their third. We already have two years experience of employing staff trained on P3 and have clear evidence that this structure is do-able.”

(Bishopston Play Association)

- 8.3 Some people felt that employers need to take responsibility for training of staff to qualification level and that employees need to be committed to obtaining qualifications, with possible sanctions in place (eg. not being employed the following year) if levels of the qualification are not achieved within a particular time scale.
- 8.4 Some respondents working in the field spoke of the necessity of taking the skills and experience of potential employees into consideration, and felt that this area needs to be at the discretion of the scheme leaders. It was suggested that formal links be set up with universities to recruit suitable students.

“There should also be some consideration given to students undertaking higher qualifications but whom have not yet completed their course eg 1st or 2nd year degree

students studying a child or sports related course, who work in playschemes during the summer but may not hold a Level 2 or 3 qualification in a related field.”

“It would be unfeasible to require seasonal university student workers to attain childcare qualifications prior to working in a setting. However, training to the national minimum standards could be organised in the year in conjunction with the university.”

(ContinYou)

“Many of the practitioners who wish to be employed in holiday schemes are in some form of educational/childcare course already. Could not part of the curriculum reflect this work and potential employees contribute or be made aware of this?”

(Action for Children Denbighshire)

Stakeholder Recommendations

- 8.5 Broadly, respondents to the consultation felt that children had the right to be protected in settings open for short periods as much as in the others, but varied in their opinion as to how this was best achieved:
- 8.6 A minority voiced the opinion that holiday and play settings should not be allowed to open if they could not conform to the same qualifications requirements as other settings:

“NDNA Cymru does not believe there should be any changes to the National Minimum Standards or any discretion in the qualification requirements for holiday and play schemes, as we believe that any person working with children should have the necessary qualifications to do so.”

- 8.7 Most respondents thought that holiday and playschemes should be subject to the same qualification requirements as other sessional settings, ie. leader holding a minimum of an appropriate Level 3 qualification, but that there should be some discretion in qualification requirements, eg “working towards level 2” allowed. Some felt that it was almost “impossible” to adhere to the minimum standards for qualifications in these settings.

“The WCBC Play Development Team believes that the level of qualification required for staff within these settings should stay the same. However we would recommend there be some degree of flexibility with regards to whether staff should have to have gained full qualifications, or if they can be allowed to be working towards an appropriate qualification (eg P3).”

(WCBC Play Development Team)

“Perhaps ratios of trained staff could be different for this sector but not if this compromises safeguarding children and reducing the quality of play opportunities. Could this relate to the number of staff in the setting and insist on a Level 3 in charge, and a ratio of Level 2 to induction standard / P3 Award stage?”

“There should be clear guidance for inspectors on the qualification requirements and the only discretion should be ‘working towards’ rather than ‘achieved’.

(RCT Play Association)

Options for change

8.8 The majority expressed the view that children need to be safeguarded by National Minimum Standards and inspection of settings. It is felt that in holiday and playschemes, there can be some flexibility in the proportion of employees who have achieved the full P3 qualification, but that groups must be lead by staff holding sector specific qualifications at Level 3.

Option 1

The qualification requirements set out in the National Minimum Standards for holiday & play schemes should be amended to enable;

- level 3 as a minimum for leading sessional settings but two staff members to be trained to this level (within a specific time frame)
- a proportion of fully qualified Level 2 staff should be set, with the rest working towards Level 2 within a strict time scale, allowing the incremental nature of qualifications such as P3.

Option 2

No change to the current situation with some discretion shown by inspectors given the unique problems faced by this sector.

Option 3

Qualification requirements within NMS enforced across all settings with no discretion shown

Options Summary

Option	Legislative Impact	Resource Impact
1 The qualification requirements set out in the National Minimum Standards for holiday & play schemes should be amended	Amended NMS	The cost of amending the NMS as set out in (1)
2 No change to the current situation	None	None
3 Qualification requirements within NMS enforced across all settings with no discretion shown	None	None

9. Risk

Consultation Question 9

How should the Regulations and National Minimum Standards be changed to require risk assessment that balances risk against the benefits of the play opportunity, rather than an avoidance of all unnecessary risk?

- 9.1 Many children and young people living in Wales have become sheltered from environments that might support their developmental play needs. Many are driven to school and leisure time activities, are watched when at play and never experience the freedom of playing without constraining supervision. As a result, they have fewer opportunities to explore the world they live in, to choose their own friends, to learn independence and to gain knowledge of the characteristics of their community⁵.
- 9.2 The Welsh Assembly Government is committed to looking for opportunities to promote to parents active play and managed risk, which offers such wide benefits to children and society and also indicate what it regards as good practice in risk management, recognising that support for play and children's development requires a balanced judgement of risk.
- 9.3 Currently, the National Minimum Standards ask daycare and childminding services to ensure that "children have their needs met in a safe environment." The Regulations and Standards talk about 'preventing accidents', 'minimising risk' and 'removing' or making hazards 'inaccessible'. It is argued that the language employed within the Regulations and National Minimum Standards leads to sterile environments that do not meet children's developmental needs.

Issues and Concerns

- 9.4 There were very strong opinions voiced during consultation regarding to the approach to risk taken in inspections of childcare and play services. People in the sector highlighted the inconsistency of approach to risk by inspectors. While some were more open to the inclusion of risk as an essential part of positive play, providers feel that some inspectors have an obsession with removing all potential risk by eg. sanding down wooden garden fences; sweeping leaves along the street in case a child may slip on their way to nursery; placing fire guards over blocked-up fire-places; cutting down trees in gardens. Some providers said that they found the language used by some inspectors intimidating leading them to be over-cautious when developing play opportunities.

⁵ Play in Wales: The Welsh Assembly Government's Play Policy Implementation Plan 2006

- 9.5 Part of the problem was seen to be that there was no mention of risk management of play in the National Minimum Standards and that the Standards were out of step with the Early Years Foundation Phase. Some of those who responded to consultation felt that there was a conflict between the Standards and Regulations and the Foundation Phase introducing potential conflicts in requirements from CSSIW and Estyn.

To avoid risk in the child's environment is a danger in itself. To make the grass flat means the child will think a field is flat and will run in sheer abandonment and trip and hurt themselves. Through the Foundation Phase we promote the child learning through exploration and for this they must be taught the risks and not hidden from them.

(Full Daycare Provider, Chuckles Nursery)

As children today are growing up in a risk averse society providers need to be able to provide provision, activities etc that allows children to experience risk in a supervised setting, therefore the standards should reflect this.

(Sessional Care Provider, South Riverside Community Devel. Centre)

- 9.6 In general, there seemed to be much confusion between risk and hazard in the regulations, standards and generally across the sector. It was also felt by many respondents that many current systems of risk assessment are outmoded.

Systems of risk assessment currently in operation are seriously outdated. A distinction should be drawn between the assessment of environmental hazards, bare electrical wires, faulty fixtures and fittings, dog mess, broken glass etc. and the assessment of risk/benefit of children engaging in particular forms of activity or behavior.

The former being a procedure that should be performed at regular intervals and monitored constantly, the latter being a dynamic process that underpins the whole of the playworkers awareness of children within the provision. The variant competencies of children engaging in activities should be accounted for and the skill of the playworker to assess children's competence should be better acknowledged.

Re-Create, Cardiff & Vale Play Services Association

Stakeholder Recommendations

- 9.7 The sector would like to see more implicit references in the National Minimum Standards to ensuring that risk is balanced against play benefit. In implementing this, there are significant training requirements for providers, practitioners and CSSIW inspectors. Making parents more aware that risk is an important part of learning was felt to be important to providers who suggested making positive statements about the importance of encouraging children to take calculated risk in literature and in contracts. Providing information about risk to parents with a positive emphasis was considered to be one route to reducing fear of litigation and negative consequences should a child hurt themselves in play.
- 9.8 Guidance – such as the Play Safety Forum *Guide to Managing Risk in Play* is needed to inform practitioners, providers and regulators and should be referred to in the National Minimum Standards.

We recommend that there is a regulatory requirement that play providers demonstrate how they manage the tension between benefit and risk, and how they support children and young people in creating and encountering risk and challenge within their play.

(Play Wales)

Options for change

9.9 With unanimous opposition to maintaining the status quo from those within the sector, and growing recognition amongst parents that children are being protected from harm to their detriment, it is clear that change needs to take place.

Option 1

Regulation Part III: 12b should be changed to reflect the balance of risk assessment and the play opportunities which help to educate children in risk-taking but with adequate supervision and appropriateness to the age of the child.

Accordingly, the National Minimum Standards need to be amended to reflect this change in emphasis.

Option 2

Introduce a regulatory requirement that play providers demonstrate how they manage the tension between benefit and risk, and how they support children and young people in creating and encountering risk and challenge within their play.

Option 3

The NMS should be amended to require childcare providers to provide risk assessments that allow an element of managed risk during play. The policy should include allowing children to help to manage their own risks. The childcare provider should also be asked for evidence that they have discussed the policy and any potential risks with parents.

Option 4

The National Minimum Standards should include reference to dynamic risk benefit assessments in childcare and play settings. Play providers should be pointed towards 'Managing Risk in Play Provision: An Implementation Guide' and inspectors should have a working knowledge of the publication.

Options Summary

Option	Legislative Impact	Resource Impact
<p>1 Regulation Part III: 12b should be changed to reflect the balance of risk assessment and the play opportunities which help to educate children in risk-taking but with adequate supervision and appropriateness to the age of the child.</p> <p>Accordingly, the National Minimum Standards need to be amended to reflect this change in emphasis.</p>	<p>Amendments to Section 12 of the Welsh Statutory Instrument 2002 No. 812 (W.92) The Child Minding and Day Care (Wales) Regulations 2002</p> <p>Amendment of NMS</p>	<p>While there will be a cost in amending the regulations and NMS, to support this change, as part of implementing it's Play Policy WAG should consider commissioning guidance and resources to assist the sector in managing this major change to practice.</p>
<p>2 Introduce a regulatory requirement that play providers demonstrate how they manage the tension between benefit and risk, and how they support children and young people in creating and encountering risk and challenge within their play.</p>	<p>Amendment of NMS</p>	
<p>3 The NMS should be amended to require childcare providers to provide risk assessments that allow an element of managed risk during play. The policy should include allowing children to help to manage their own risks. The childcare provider should also be asked for evidence that they have discussed the policy and any potential risks with parents.</p>	<p>Amendment of NMS</p>	
<p>4 The National Minimum Standards should require the presence of dynamic risk benefit assessments in childcare and play settings. Play providers should be pointed towards 'Managing Risk in Play Provision: An Implementation Guide' and inspectors should have a working knowledge of the publication.</p>	<p>Amendment of NMS</p>	

10. Continuity of services following the death of a Sole Trader

Consultation Question 10

If a registered person is a sole trader and dies, should there be some flexibility within the regulations that would allow the service to continue until legal ownership is re-established, or the setting is formally closed?

- 10.1 A setting that operates for children under the age of 8 years, for more than 2 hours per day or more than 8 sessions per year is required to register as a provider of childcare with CSSIW. Registration of the setting under the Childminding and Day Care (Wales) Regulations 2002 requires that there is a "registered person" (who may or may not be the "person in charge" of) providing day care on the premises.
- 10.2 When the registered person is a sole trader the registration for the setting relies upon that person being in a position to take responsibility for the service. If the sole trader dies, the registration of that provision ceases to exist. Without registration the provision can no longer operate legally. In these circumstances there are significant implications for all stakeholders: continuity of care for children is lost and there is an immediate loss of employment for staff. Neither would have any notice in the event of a sudden death.

Issues and Concerns

- 10.3 Many people responding to this issue recognized that the current system does little to contribute to an environment that fosters sustainability of provision and is likely to have a positive outcome for children and young people. It should be as a last resort that the setting is formally closed. Every effort should be made to ensure continuity of provision.
- 10.4 It was generally felt that there should be a method in place to enable the service to continue within a limited timescale until a new provider is found. It is neither in the public interest nor in the interest of parents - who rely on services to care for their children to lose provision at short notice.

Stakeholder Recommendations

- 10.5 Most stakeholders felt that as previous inspections would already have ensured appropriate systems and procedures are in place there should be a process that could safeguard the provision until arrangements are made to either re-establish or close the setting. However, it should be recognised that the situation is different with childminders working alone.

10.6 In the case of group childcare there should be some flexibility within the regulations that would allow the service to continue until legal ownership is re-established. CSSIW should request a nominated person to act as a registered person for three months to enable the setting to continue to operate. This would ensure continuity of care for the children in the setting and give some stability to the workforce and parents/carers. There must be clear instruction and guidance provided for all to ensure the security of the sole trader's business/family should they die unexpectedly.

Options for change

10.7 It is clear that the Regulations should be amended to allow the continuation of childcare provision following the death of a sole trader providing Day Care for the benefit of children in that setting, parents, the local community and employees.

Option 1

The regulations should be amended to require sole traders operating Day Care services to nominate an additional suitable person who would become the Registered Person in the event of their death. The Child Minding and Day Care (Amendment) (Wales) Regulations 2003 already allow for a Person in Charge to be held responsible in the absence of the Registered Person.

Option 2

The regulations should be amended to allow provision to continue to operate for a period of 3 months (with the express permission of the regulator) until a new Registered Person is appointed through re-establishing legal ownership.

Options Summary

Option	Legislative Impact	Resource Impact
<p>1 The regulations should be amended to require sole traders operating Day Care services to nominate an additional suitable person who would become the Registered Person in the event of their death.</p>	<p>Amendments to The Child Minding and Day Care (Wales) Regulations 2002</p>	<p>Cost of amending regulation and the NMS.</p>
<p>2 The regulations should be amended to allow provision to continue to operate for a period of 3 months (with the express permission of the regulator) until a new Registered Person is appointed through re-establishing legal ownership.</p>	<p>Amendments to The Child Minding and Day Care (Wales) Regulations 2002</p>	

11. Registration of Committee-led Childcare Services

Consultation Question 11

Should regulations in Wales be amended to enable unincorporated associations to register as childcare providers in their own right?

- 11.1 Currently, childcare settings that are 'unincorporated associations' (more commonly known as committee-run settings) are unable to register with CSSIW within their own right, as in law they are not viewed as a separate entity – just a group of people who come together to do something. Registration to provide childcare is therefore in the name of specific individuals who agree to act as representatives of the organisation.
- 11.2 The Children Act (2004) made provision for legal enforcement under Part XA of the Children Act (1989) to be made in the name of the unincorporated association and for any fines to be met from the association's assets. This change was designed to protect well-meaning individuals who agree to be members of a committee to deliver childcare services but could face unlimited personal liability for things they were not directly responsible for.
- 11.3 Currently, CSSIW do not register unincorporated associations but ask two people from the committee to represent the group as the Registered Persons. If CSSIW were to register an association as allowed for in the Children Act (2004) then all members of the committee would need to become joint Registered Persons.
- 11.4 While unincorporated associations are not the ideal vehicles for delivering sustainable childcare, a significant number in Wales – mainly playgroups and out of school clubs – are governed in this way.

Issues and Concerns

- 11.5 Most of the concerns regarding this issue were to do with the fragility of some childcare services – in particular those that rely on volunteers to manage their services. On one hand, it was felt that the ability for unincorporated associations to register as daycare providers would avoid the current pressure places on two individuals. However, it was also recognised that by registering an association those involved could be misled into perceiving that there was also a situation of collective or limited liability.

Stakeholder Recommendations

- 11.6 Some service providers would like to see unincorporated associations become register-able entities but in general, those working in development or in

representative organisations would prefer that organisations should be encouraged to incorporate and therefore limit the liability of individuals.

All committees need to understand their responsibilities which is often not the case and all should be encouraged to become companies limited by guarantee for their own protection.

Early Years and Childcare Co-ordinator

11.7 Given the low level of knowledge in this area amongst many volunteers who provide childcare services, some felt that unincorporated associations should only be registered if they could prove that are aware of their responsibilities and fulfil legal requirements.

Options for change

11.8 There would seem to be no real appetite for change – particularly from those who fully understand the legal intricacies of this situation and the potential liability issues.

Option 1

Maintain the current approach of not registering unincorporated associations but provide additional support and information about the legal status of volunteer managers and encourage the incorporation of groups. NMS should refer to the appropriateness of corporate governance structures.

Option 2

Enable the registration of unincorporated associations through the entire committee becoming joint registered persons.

Options Summary

Option	Legislative Impact	Resource Impact
1 Maintain the current approach of not registering unincorporated associations but provide additional support and information about the legal status of volunteer managers and encourage the incorporation of groups. NMS should refer to the appropriateness of corporate governance structures.	Amendment to NMS	Minimal
2 Enable the registration of unincorporated associations through the entire committee becoming joint registered persons.		This would result in additional administration for CSSIW in registering up to 1,000 committee-run settings in Wales

12. Deadlines for qualification levels

Consultation Question 12

How should the Welsh Assembly Government and CSSIW deal with services that are unable to meet the revised deadlines for qualification levels by 2011?

- 12.1 National Minimum Standards require that the person in charge of all group care settings must hold a level 3 qualification and that a childminder must have successfully completed a pre-registration course. In full day care provision 80% of non-supervisory staff should be qualified to at least level 2, with at least half of these staff having a qualification at level 3 or above. The requirement for sessional care, out of school provision and crèche facilities is that 50% of all staff should hold level 2 qualifications. Other than the person in charge, only in full day care is there a requirement for any level 3 qualified staff.
- 12.2 The current situation is that settings that are already registered that do not meet the qualification levels specified in National Minimum Standards are required to produce, for CSSIW's consideration and approval, an action plan detailing how and when they will meet the qualification standard. New settings are not registered without staff having the appropriate qualifications in place. From 2011 the expectation is that settings must consistently meet standards or risk enforcement action by CSSIW. However, research would indicate that current sector recruitment and retention issues are unlikely to be resolved in the interim period in some service areas with the potential to leave settings vulnerable to enforcement. The Scoping and Mapping of the Childcare Workforce (CCW 2006) showed that there were a range of problems associated with workforce recruitment and retention. These issues include a growing workforce requiring at least 5,700 staff per year to maintain existing provision, with increased competition for staff from schools requiring a predicted 3,500 additional staff to support Foundation Phase provision in 2008 alone.

Issues and Concerns

- 12.3 Across the sector, there is some consensus that the 2011 deadline for settings to achieve qualifications requirements would be achievable if sufficient funding were in place to enable practitioners to train. The delay in accessing ESF Convergence funding has resulted in an environment where, for example, there are only 4 FE colleges in Wales delivering level 3 playwork qualifications.
- 12.4 Some in the sector are concerned any extension of the deadline would legitimise poor quality services to the detriment of the sector.

Options for change

12.5 Most respondents recommend that the deadline should remain, but with a proviso that additional funding is made available to provide the requisite training. The supply and demand of training needs to be coordinated at an all-Wales level – through for example the Sector Skills agencies and at a local level through Children & Young People’s Partnerships’ local workforce development plans.

Option 1

All settings should be required to meet the current standards for qualifications by 2011. Settings that are unable to meet this requirement should have limitations imposed and a recovery plan agreed with CSSIW.

Option 2

All settings should aim to meet the current standards for qualifications by 2011. However, there should be some flexibility and settings that are unable to meet this requirement should be required to have an action plan in place to allow their registration to continue.

Option 3

The 2011 deadline should be extended.

Options Summary

Option	Legislative Impact	Resource Impact
1 All settings should be required to meet the current standards for qualifications by 2011. Settings that are unable to meet this requirement should have limitations imposed and a recovery plan agreed with CSSIW.	None	There needs to be an independent assessment of any gap in training provision that would limit the success of this option.
2 All settings should meet the current standards for qualifications by 2011. However, there should be some flexibility for sessional, out of school or play settings that are unable to meet this requirement should be required to have an action plan in place to allow their registration to continue.	None	There may be a resource requirement should a significant gap be identified that made unlikely that regulation could be enforced.
3 The 2011 deadline should be extended.	Amendment to regulations	Minimal

13. Foundation Phase

Consultation Question 13

How should the National Minimum Standards be revised to take account of the Foundation Phase?

- 13.1 The Foundation Phase for 3 to 7 year olds in Wales (2008) has provided a curriculum framework for children's learning. This has replaced Desirable Outcomes for Children's Learning.
- 13.2 The Foundation Phase is planned as a progressive framework for children based upon a balance between structured learning through child-initiated activities and practitioner directed activity.⁶
- 13.3 The Foundation Phase documents provide guidance for many aspects of provision that are also included to varying extents in the National Minimum Standards. These include play, learning, special needs, equal opportunities and assessment, when applied to children over the age of three years.
- 13.4 The Statutory Education Programme within the Foundation Phase identifies 7 areas of learning to support the development of children and their skills. It is expected that these are not approached in isolation but are treated as 'a cross-curricular approach to form a practical relevant curriculum.'⁷ The Foundation Phase for 3 year olds is currently based on 10 hours provision per week. Normally in blocks of 2 or 2 ½ hours per day and inspection of these sessions is the remit of Estyn.
- 13.5 However, National Minimum Standards apply to the total amount of time a setting is open and it is against the time the provision is open that CSSIW inspect.
- 13.6 National Minimum Standards do not refer to or suggest any particular approach or methodology to early education and play.

Issues and Concerns

- 13.7 Most respondents felt that a clear distinction should be made between education and childcare regulation and inspection. It also needs to be made clear that not all settings working with young children are offering the Foundation Phase.
- 13.8 If the Foundation Phase is going to be referred to within the National Minimum Standards, clarity is needed to avoid confusion during inspections. While both

⁶ Framework for Children's learning for 3 to 7-year-olds in Wales (DCELLS)

⁷ Framework for Children's learning for 3 to 7-year-olds in Wales (DCELLS)

Estyn and CSSIW inspectors need an awareness of both childcare regulation and Foundation Phase, they need to be clear about their roles and the framework within which they are inspecting. Providers providing childcare and Foundation Phase learning may have conflicting priorities pressed upon them depending on the regime that is engaged with them – including local authority Foundation Phase officers.

“It is critical that the regulators and inspection bodies are completely clear in terms of which aspects of the early years service they are inspecting. At present there is confusion among providers as to who’s responsible for inspecting the different elements of the service.”

(Mudiad Ysgolion Meithrin)

- 13.9 An alternative view was to include the broad Foundation Phase principles within the National Minimum Standards so that all providers working with the 3 to 7 age-group took a consistent approach. It is argued that unless there is reference to Foundation Stage principles from within the NMS, a key driver of quality practice would be missing.

Options for change

- 13.10 The majority of respondents were of the view that the National Minimum Standards need to be revised - to a lesser or greater extent - take account of the Foundation Phase from the perspective of both childcare and play providers. However, revised standards should take account of a child’s learning processes rather than the time spent in a setting.

Option 1

Substitute reference to *ACCAC Desirable Outcomes for Children's Learning with Foundation Phase* in the National Minimum Standards.

Option 2

Incorporate key Foundation Phase principles within the National Minimum Standards.

Option 3

Do not include Foundation Phase criteria within the National Minimum Standards, setting out generic guidelines instead.

Options Summary

Option	Legislative Impact	Resource Impact
1 Substitute reference to <i>ACCAC Desirable Outcomes for Children's Learning with Foundation Phase</i> in the National Minimum Standards.	Amendment of NMS	Costs of re-drafting NMS.
2 Incorporate key Foundation Phase principles within the National Minimum Standards.	Significant Amendment of NMS	
3 Do not include Foundation Phase criteria within the National Minimum Standards, setting out generic guidelines instead.	Amendment of NMS	

14. Increased and overlapping inspection for funded settings

Consultation Question 14

Should there be a different approach to the inspection of settings that deliver both education and care which are currently inspected by both Estyn and CSSIW and if so, how can legislation cater for this?

- 14.1 CSSIW inspects against the Childminding and Day Care (Wales) Regulations 2002 annually for full daycare settings and every two years for all other services. A CSSIW inspection will cover 23 standards that include care, play, learning and assessment. It is the responsibility of the setting to ensure that National Minimum Standards are maintained for the period of time the setting operates.
- 14.2 Estyn is charged with the duty to inspect providers of non-maintained early years settings. This inspection system currently follows a 6-year cycle. Estyn will only inspect and report on settings that are included in the local authorities' Early Years Development and Childcare. These are funded pre-school settings. The School Standards and Framework Act 1998 requires HMCI⁸ to keep the Welsh Assembly Government informed about the quality and standards of nursery education and the spiritual, moral, social and culture development of children for whom nursery education is provided.
- 14.3 Settings that are registered with CSSIW and funded to provide education for children between the ages of 3 and 5 years are subject to both CSSIW and Estyn inspection. There is an overlap of inspection commentary for provision for children over the age of three years in a number of areas including, but not limited to NMS of: Assessment, Special Needs, Working in Partnership with Parents, Opportunity for Play and Learning, Nurture and Wellbeing, Behaviour, Health Care, Equality of opportunity, Premises, Equipment and Safety
- 14.4 Currently, CSSIW and Estyn share information about settings between inspections. In cases where a setting is due an inspection by both inspectorates within a short period of time, the Registered Person can ask for the inspection arrangements to be adjusted.

Issues and Concerns

- 14.5 Many of those consulted felt that there needs to be a commonsense approach to this issue so that settings are not being over-inspected. Because the inspected areas are very similar the system can become an un-necessary

⁸ Her Majesty's Chief Inspector of Schools in Wales.

burden upon business. Some settings said that it feels as if they spend more time on inspections and paperwork relating to them than caring for children. In addition, some in the sector said that the outcomes of inspections often conflict with one another.

14.6 Many feel that there needs to be a greater understanding between ESTYN and CSSIW regarding the amount of paperwork required from settings that are often already fully stretched in terms of time, resources. Sharing of inspection administration could and should be considered.

14.7 As well as inspection by CSSIW and Estyn (if funded to provide education), many settings are also visited by LEA Advisory Teachers, Flying Start Co-ordinators, Foundation Phase personnel, Healthy Living initiative staff and local authority childcare development officers. Again, providers say that this often leads to conflicting advice and demands.

Options for change

14.8 Responses to consultation suggest three clear options for change.

Option 1

Recognising that educating a child cannot be separated from care and vice versa, the needs of the child should be put before any political or philosophical agenda. The Assembly Government should place children at the centre of a single inspection system addressing the requirements of settings that provide both learning and care to children under 8 undertaken by inspectors that are professionally competent in both fields.

Option 2

Inspections should continue to be separate but with clear blue water between the role of CSSIW in inspection the standards of care; and Estyn making assessment against learning outcomes achieved.

Both inspectorates should be clear as to the criteria they individually inspect against and not muddy the process by encroaching on each others' area of expertise.

Option 3

14.9 While inspections remain separate, Estyn and CSSIW should develop information sharing protocols to reduce the bureaucratic burden of double-inspections on providers.

Options Summary

Option	Legislative Impact	Resource Impact
<p>1 The Assembly Government should place children at the centre of a single inspection system addressing the requirements of settings that provide both learning and care to children under 8 undertaken by inspectors that are professionally competent in both fields.</p>	<p>Would require significant amendment to NMS and Foundation Stage practice guidance</p>	<p>Resources to develop a single inspection framework and regime. Resources to re-train / recruit inspectors.</p> <p>While requiring an initial investment the streamlining of inspections could reduce funding requirement over the medium-term.</p>
<p>2 Inspections should continue to be separate but with clear blue water between the role of CSSIW in inspection the standards of care; and Estyn making assessment against learning outcomes achieved.</p>	<p>None</p>	<p>Would require some input from WAG in coordinating inspection regimes</p>
<p>3 While inspections remain separate, Estyn and CSSIW should develop information sharing protocols to reduce the bureaucratic burden of double-inspections on providers.</p>	<p>None</p>	<p>Minimal additional resources required</p>

15. Vetting and Barring

Consultation Question 15

How should the National Minimum Standards reflect the change in law set out in the Safeguarding Vulnerable Groups Act (2006)?

- 15.1 As a result of the Safeguarding Vulnerable Groups Act (2006), from October 2009 it will be a criminal offence to employ a person who is deemed unsuitable to work with any vulnerable group – including children. This is a significant change from the current situation where employers have to make the decision based on evidence (from Criminal Records Bureau Checks and references) whether or not a person is suitable to work with children.
- 15.2 The new Independent Safeguarding Authority (ISA) will register individuals and provide them with a unique reference number. Those barred from working with vulnerable groups due to criminal or other activities will be excluded from the register. Employers will need to ask for the ISA number of each new employee and check with the Authority that the person is registered and therefore fit to work with children. It will be illegal for an employer to allow a barred person, or a person who is not registered with the ISA to work with children. It will also be a criminal offence for an employer to take on a person if they fail to check that they are ISA registered. Should a person be barred all current employers will be notified by ISA and the persons employment will end immediately.
- 15.3 The ISA system is designed to provide additional safeguarding but will not replace the need for employers to undertake Criminal Records Bureau Checks (CRB's) and take up references. It may affect how some employers choose to update CRB checks.
- 15.4 The ISA system will generally supersede the requirements set out in the Child Minding and Daycare (Wales) Regulations 2002 for the Registered Person and the Person in Charge to be checked under the Protection of Children Act and regulations of the Education Reform Act. In addition, regulations regarding employment procedures and the records kept on staff may need amending.

Issues and Concerns

- 15.5 All respondents made positive responses to this question and agreed that the National Minimum Standards need to change to reflect the change in law.

“Changes in the law will provide further confidence on the safety of people working in this sector, however this remains a huge, complex and potentially confusing area. It is crucial that all those working in childcare settings are up to date and aware of the new requirements under the act. “

(ContinYOU)

15.6 Some voiced concern that providers would not adequately understand the new system, or that the new system would not be in place by October 2009.

“Regulations and NMS need to ensure that ISAs and CRBs are in place for settings and committees when ISAs are introduced in October 2009. ... Further training and awareness raising on a regular basis must be provided, as there is already a misunderstanding of the proposed new scheme.”

(Wales PPA)

15.7 The issue of whether the new ISA system would have international collaboration was also raised.

Options for change

15.8 Respondents to the question were clear and unanimous in their responses to this question. They welcome the Safeguarding Vulnerable Groups Act (2006) and feel that it’s implementation will help to protect children from harm. However, as the Act is law, it will require childcare providers to adhere to its demands irrespective of the NMS.

Option 1

No change to the National Minimum Standards

Option 2

Part IV section 16 of The Child Minding and Day Care (Wales) Regulations 2002 should be simplified to reflect the primary legal status of the Safeguarding Vulnerable Groups Act (2006)

Option 3

The NMS should make it clear that ISA checks need to be carried out alongside CRB checks and provide signposting to further information and guidance.

Options Summary

Option	Legislative Impact	Resource Impact
1 No change to the National Minimum Standards	None	None
2 The Regulations should be simplified to reflect the Safeguarding Vulnerable Groups Act (2006)	Part IV section 16 of The Child Minding and Day Care (Wales) Regulations 2002	Costs of amending regulations.
3 The NMS should make it clear that ISA checks need to be carried out alongside CRB checks and provide signposting to further information and guidance.	Amendment to NMS	As per (1)

16. Premises

Consultation Question 16

Should the regulation be amended so that potential childcare providers who are not required by law to obtain planning consent do not have to provide evidence that they don't?

- 16.1 The Registration of Social Care and Independent Health Care (Wales) Regulations 2002 set out the information to be supplied on an application for registration as a Childminder or as a provider of Daycare. It asks for a statement from the applicant that planning consents are either not required, or are in place prior to a registration decision being made by CSSIW.
- 16.2 In the case of childminders, it is unusual that any planning consents are required but they still have to obtain a statement that they do not require any. This has to come from the local planning authorities, which can be complex, costly and burdensome for applicants.

Issues and Concerns

- 16.3 There is confusion at present as to which childcare providers do not have to obtain planning consent by law. The problem in not providing evidence is that there is no proof that the premises can be used for the purpose of childcare legally, which may lead to problems in the future. Any change to regulations should make it clear that the requirement not to seek planning approval or consent applies only to childminders providing care in what is primarily their own home.

Options for change

All of those responding to consultation – including local authorities childminders and the National Childminding Association were all of the opinion that the current regulation was unnecessary.

Option 1

The regulation should be amended so that childminders who are not required by law to obtain planning consent do not have to provide evidence that they don't.

Option 2

No change

Options Summary

Option		Legislative Impact	Resource Impact
1	The regulation should be amended so that potential childminders who are not required by law to obtain planning consent do not have to provide evidence that they don't.	Amendment to Part II of the Registration of Social Care and Independent Health Care (Wales) Regulations 2002	Costs of amending regulations.
2	No change	None	None

17. Recommendations

17.1 Based on consideration of the opinions of all stakeholders across the field, we would propose the following recommendations for change.

The National Minimum Standards

- 17.2 The NMS should be re-written as core standards that reflect common requirements for all types of provision with appendices that record requirements that differ according to the type of provision or age of children being cared for.
- 17.3 Each standard should make reference to UNCRC and Seven Core Aims. The Regulations that apply to each standard should be written clearly into the document.
- 17.4 The NMS should be presented in a format (eg. loose-leaf binder) that will allow updates and addendum to be issued.
- 17.5 The NMS should be supported by a website providing an up-to-date version of the NMS with links to guidance and relevant WAG policy documents.

Regulation of Daycare & Childminding

- 17.6 All 'childcare' should be regulated in Wales to the same core standards - including childcare services that only operate for short periods – to ensure that children's rights and needs are catered for. However, effective regulation will require clear definitions to be made within the regulations to differentiate between 'childcare', 'play' and other types of services and settings that children and young people attend.
- 17.7 Regulations should be amended to encompass all childcare and play services that cater for children up to the age of 14 years (and up to 17 years in the case of childcare catering for disabled children) requiring compulsory registration phased in over a period of 5 years. NMS should be drafted to reflect the different needs of older children.

Nanny and Babysitting Agencies

- 17.8 Amendments should be made to the Domiciliary Care Agencies (Wales) Regulations 2004 to ensure that Nanny and Babysitting Agencies are regulated in the same way as adult care agencies.

Family Members

17.9 Without a wider debate around the role of family members in providing informal childcare, it is not appropriate to consider any changes to the current situation that generally excludes them from regulation.

Qualifications

17.10 The NMS should be amended to require qualifications that are appropriate to the type of setting (eg. early years or playwork) and to the age-group of children being cared for. This should include a requirement for people working with babies to have specialised, accredited training.

17.11 The NMS should be amended to require the following;

- attainment or progress towards an appropriate higher level (Level 4+) qualification for leaders and managers of day care settings;
- a minimum of two Level 3 members of staff in sessional care, holiday care and play settings – to allow for absences;
- registered childminders to achieve Level 3 within 5 years of first registering;
- all unqualified staff working in childcare and play to be receiving training that may lead them to gaining a minimum qualification at level 2 within an appropriate and realistic timescale;
- NMS and inspection frameworks that require all staff with or without qualifications to have undertaken appropriate induction training and are receiving regular professional development training.

17.12 The two Sector Skills Councils (CCW and SkillsActive) with responsibility for the workforce should be asked to work together to provide an integrated framework of appropriate current qualifications to guide both childcare and play providers and the inspectorate. The Council's should also provide supplementary guidance to the framework containing information about predecessor qualifications with guidance on how employers should assess their validity along with an assessment of CPD. Lists of current and predecessor qualifications should be available as an up-to-date web-based database.

17.13 There should be no extension to current deadlines for settings to meet the qualification requirements currently set out in NMS.

Risk

- 17.14 Regulation Part III: 12b should be changed to reflect the balance of risk assessment and the play opportunities which help to educate children in risk-taking but with adequate supervision and appropriateness to the age of the child.
- 17.15 Accordingly, the National Minimum Standards should be amended to require childcare providers to provide risk assessments that allow an element of managed risk during play. Policies should include allowing children to help to manage their own risks. The childcare provider should also be asked for evidence that they have discussed the policy and any potential risks with parents.
- 17.16 NMS should refer to '*Managing Risk in Play Provision: An Implementation Guide*' as a guide to good practice and inspectors should have a working knowledge of the publication.

Continuity of services following the death of a Sole Trader

- 17.17 As this issue is dealt with adequately in the proposed Children and Families (Wales) Measure, no further changes to regulations would be required.

Registration of Committee-led Childcare Services

- 17.18 This is also addressed in the proposed Children and Families (Wales) Measure, but NMS should explicitly require good corporate governance for all childcare services with reference to good practice.

Childcare and Early Years Learning

- 17.19 Recognising that educating a child cannot be separated from care and vice versa, the needs of the child should be put before any political or philosophical agenda. The Assembly Government should place children at the centre of a single inspection system addressing the requirements of settings that provide both learning and care to children under 8 undertaken by inspectors that are professionally competent in both fields.
- 17.20 The key *Foundation Phase* principles should be incorporated into the revised NMS for all settings providing pre-school childcare.

Vetting and Barring

- 17.21 Part IV section 16 of The Child Minding and Day Care (Wales) Regulations 2002 should be simplified to reflect the primary legal status of the Safeguarding Vulnerable Groups Act (2006). In addition, the NMS should make it clear that

ISA checks need to be carried out alongside CRB checks and provide signposting to further information and guidance.

Premises

17.22 The Registration of Social Care and Independent Health Care (Wales) Regulations 2002 should be amended so that childminders who are not required by law to obtain planning consent do not have to provide evidence that they don't.