



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

Local Planning Authorities  
Local Authorities  
Local Children's Partnership Co-ordinators  
Local Early Years Development and  
Childcare Partnerships Co-ordinators

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Dear Colleagues

## **PLANNING AND CHILDCARE IN WALES**

This Circular Letter covers the issue of planning, childminding and day-care provision. It comes jointly from the Planning Division and the Children's Strategy Division of the Welsh Assembly Government, and the Care Standards Inspectorate for Wales. A similar letter was issued in England on 10 January 2005, jointly by the Office of the Deputy Prime Minister, SureStart and Ofsted; this Circular Letter closely follows that advice. It also takes forward advice provided in CL-08-03 "Planning Issues and Childminders" of November 2003.

This Circular Letter encourages local planning authorities and local authority Early Years Development and Childcare Partnership (EYDCP) officers, responsible for childcare, to work together to increase childcare provision. This will take forward the Assembly Government's childcare strategy "Childcare is for Children", to provide safe childcare that will promote the intellectual, and behavioural development of children, and deliver significant economic and social benefits. It anticipates the coming into force of the Childcare Act 2006 in April 2008, when local authorities will be under a new duty to secure sufficient childcare in their areas for working parents. This Circular Letter does not however attempt to propose changes to local authority statutory functions.

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At present, childcare provision must be assessed and an annual plan provided by the local authority led EYDC Partnership. In some areas the functions of an EYDCP are taken by a broader Children's Partnership overseeing services for the 0-10 age group. The Assembly Government does not prescribe whether local authority officers supporting this partnership should come from Education, Social Services or any other directorate. For simplicity in this letter we refer to the EYDCP as the local authority entity responsible for childcare.

Given the Assembly Government's aims for childcare provision, it is important that relevant parties, involved in childcare, work together to provide childminding and day care facilities. The principles and objectives set out in this document should be supported by a regular dialogue between local planning authorities, local EYDCPs, and representatives from the Care Standards Inspectorate for Wales (CSIW). By working together, all stakeholders will play a part in delivering better outcomes which will have a lasting and beneficial effect on the communities they support.

While local planning authorities and CSIW have roles to play in the approval of new childcare provision, these processes operate independently. In determining any planning applications which may be needed, local planning authorities must have regard to their statutory development plan and the circumstances of each case. The criteria against which CSIW register and inspect provision are set out in the Registration of Social Care and Independent Health Care (Wales) Regulations 2002, the Childminding and Day Care (Wales) Regulations 2002 and the associated National Minimum Standards for Under Eights Day Care and Childminding. These are principally concerned with the safety and welfare of the children receiving childcare and the quality of the care they receive.

This letter is written within the context of the Childminding and Day Care (Wales) Regulations 2002 and National Minimum Standards for Under Eights Day Care and Childminding, and Planning Policy Wales.

We recommend that the following principle is adopted by stakeholders:

**Local planning authorities, local EYDCPs, and CSIW should work together to help support the development of childcare services for children and families.**

- **Annex A** sets out objectives to support the principle of collaborative working and suggests some actions which will support its implementation. These are equivalent to the objectives proposed in England.
- **Annex B** provides an outline of the roles of stakeholders in providing childminding and day care services in Wales, and includes further background information about the relevant regulatory framework.
- **Annex C** is an example of a questionnaire to help identify whether childcare proposals will require planning permission.
- **Annex D** is a suggested template for childminders to use as the basis of a letter, to inform local planning authorities of their intention to begin childminding at their home address.

In order to facilitate joint working, we advise that all stakeholders follow the points for action relevant to their particular role. This is not, however, a prescriptive model. These objectives and actions should support local arrangements and should be mutually acceptable to all parties, in order to meet the needs of local communities. Identifying a procedure that fulfils the needs of all involved may require local discussion between parties, and this is also encouraged.

The Assembly Government is consulting on a proposal to reduce childminder planning application fees by 50% in those instances where planning consent is required. A copy of the consultation letter is enclosed and additional copies are available from the Assembly Government's Planning Division.

Yours sincerely

**Rosemary Thomas**  
Head of Planning Division

**Christopher Burdett**  
Head of Children's Strategy Division

**Rob Pickford**  
Chief Executive of Care Standards Inspectorate for Wales

## **Annex A**

The following objectives and associated actions are intended to support the joint working principle:

***Local planning authorities, local EYDCPs and CSIW should work together to help support the development of childcare services for children and families.***

### **Objective 1: To support the development of childcare provision.**

**Rationale:** Access to affordable childcare is crucial to achieving a number of the Assembly Government's key objectives including the improvement of educational outcomes for children and the reduction of poverty.

#### **Points for action:**

- Local authority EYDCPs should prepare and regularly update an audit of local supply of, and demand for, childcare places within their locality, and share this with their planning colleagues.
- When formulating planning policy, considering planning applications, and providing pre-application advice, planning authorities should have regard to all relevant factors in the local area and should take full account of local need for childcare places.
- The National Minimum Standards allow childminders throughout Wales to care for a maximum of six children under the age of eight including their own, depending on the terms of their registration with CSIW. Some childminders may work together on the same premises. Although childcare standards have no direct bearing on the consideration of a planning application, planning authorities should be aware of other material considerations, including the requirements of the National Minimum Standards in relation to adult-child ratios.
- While there are no targets set, CSIW may register childminders within 12 weeks, and day care providers within 25 weeks of receipt of applications. Local planning authorities aim to decide planning applications within 8 weeks.

### **Objective 2: To create a safe environment for children.**

**Rationale:** Children thrive best in an environment which is suitable for their needs and in which they are safe.

#### **Points for action:**

- CSIW asks providers to confirm whether they have informed the local planning authority of their application and will ask the provider or applicant to provide a completion of works certificate when appropriate.
- CSIW notifies the local planning authority when it has relevant planning concerns about proposed or existing provision.
- Local EYDCPs will give appropriate support to providers to ensure they comply with the National Minimum Standards and planning policies.

**Objective 3: To ensure childcare is registered.**

**Rationale:** In addition to operating unlawfully, day care or childminding premises which are not registered with CSIW may not be physically suitable for the purpose of caring for children.

**Points for action:**

- With few exceptions, it is unlawful to provide childminding or day care services which have not been registered with CSIW. Local authorities will inform CSIW when they know of unregistered childminding or day care premises. CSIW investigates where necessary, setting out any requirement to register. If the person providing the service refuses to make an application for registration, CSIW can stop them operating.

## **Annex B**

### **ROLES OF STAKEHOLDERS IN THE DELIVERY OF CHILDMINDING AND DAY CARE**

#### **Local Planning Authorities**

##### **The Need for Planning Permission**

Planning permission may be required in relation to carrying out childminding or day-care if:

- New premises are to be developed
- Existing premises are to be physically extended or altered
- Starting or intensifying childminding or day-care uses in existing premises constitutes a "material change of use"

Planning Circular Letter 08/03 encouraged the provision of pre application planning advice for childminders. Local planning authorities may provide such advice as to whether planning permission is needed, and discuss the relevant policy issues. The advice provided should be clear, consistent and timely. When determining planning applications, a local planning authority will have regard to the policies in its statutory development plan, and other material considerations, including national planning policy.

In addition to local planning authorities, those seeking planning permission may also obtain advice from Planning Aid Wales. Planning Aid Wales is a voluntary service, offering independent and professional advice on planning matters, to community groups and individuals. [www.planningaidwales.org](http://www.planningaidwales.org).

##### **Planning Appeals**

It is possible to appeal against the local planning authority's refusal of planning permission, or its failure to decide a planning application within 8 weeks. An appeal must be made within six months of the decision, or, in the case of non determination, at the end of the eight week period from the registration date of the application. Planning appeals are dealt with by the Planning Inspectorate, an executive agency of the Welsh Assembly Government. [www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk).

##### **Change of Use**

Planning permission is not normally required where the use of part of a home for business purposes does not change the overall character of the property's use as a dwelling. For example, childminding complying with National Minimum Standards would be unlikely to mean that the character of the home's use as a dwelling had ceased and would not normally require planning permission.

Compliance with childminding standards is different from planning permission; the latter may still be required if, in the judgement of the local planning authority, a business use within a home (such as childminding), ceases to be merely incidental to the main residential use. In this case, the authority will have taken the view that a material change of use is likely to have taken place, and planning permission will need to be sought.

The established planning principle of ancillary (or incidental) uses recognises that new activities may be started in a building or within its curtilage without the need for planning permission, provided they remain ancillary to the main use. The possibility of there having

been such a material change of use may be indicated where the business or non-residential use consistently generates visitors, traffic, noise or fumes over and above what would normally be expected if the property were in use as a home without any such ancillary use. Whether a use is ancillary, or constitutes a material change of use, is a judgement to be made by the local planning authority.

*Those considering carrying out childminding work at home are advised to seek the advice of their local planning authority at an early stage.*

The Questionnaire at **Annex C** offers a way of providing basic information about intended childminding. Local planning authorities may want to use or adapt it, for handling queries from potential childminders, possibly including those arising from childminders who write using the letter at **Annex D**.

Prospective childminders may find it helpful to use the letter at **Annex D** to inform the local planning authority of their intention to begin childminding at their home address, enclosing the Questionnaire to provide basic information to help the local planning authority to respond.

### Certificate of Lawfulness of a Proposed Use or Development (CLOPUD)

If someone wants to be certain that a planning application is not needed to do what they propose, they can apply for a certificate from the local planning authority. The process provides a measure of formality and certainty that informal enquiries cannot. A fee (currently £144) is payable to the local planning authority, and there is a right of appeal if a certificate is refused. The questionnaire at Annex C could be used in connection with an informal enquiry or to provide additional information in connection with an application for a CLOPUD.

### **Local Planning Policy - the planning authority's statutory development plan**

Local planning authorities are required to make decisions in accordance with policies in their development plans, unless material considerations lead them to decide otherwise. Authorities are required to consult locally and consider representations made when preparing development plans. Authorities preparing the new Local Development Plans will be required to demonstrate that local people and organisations have been effectively involved in plan preparation from the outset.

Officers in local planning authorities can advise on development plan policies for their area, and can indicate how and when interested parties will be involved in plan preparation. This will provide an opportunity for those responsible for childcare development to make representations on policies that should form the basis for the local planning authority's subsequent decisions on planning applications which may be needed for childcare uses.

### **Care Standards Inspectorate for Wales**

#### **The need for registration under the Children Act 1989**

Part XA of the Children Act 1989, introduced by Part VI of the Care Standards Act 2000, transferred responsibility for the regulation of childminding and day care from local authorities to the National Assembly for Wales. The Assembly delivers these responsibilities through CSIW. This legislation sets out the circumstances in which childminders and day care providers need to register with CSIW before they can provide day care or childminding.

Day care provision must be registered if it operates for children under the age of eight in non-domestic premises for more than two hours in any day, and for more than five days in any year. Childminding must be registered if it operates for children under the age of eight, for

more than two hours in any day on domestic premises, for reward. There are some exemptions to the registration requirements. For example, care on domestic premises does not need to be registered with CSIW if the child is a close relative to the carer, or if it takes place in the home of the child's parents, unless three or more parents are using the care in the home of one of them.

It is an offence to provide day care without registration. For childminding, CSIW can issue an enforcement notice if such care is being provided without registration. The enforcement notice is valid for one year and childminders commit an offence if they provide childminding whilst the enforcement notice is in place.

## **The role of CSIW in registering day care provision and childminding**

When a person applies for registration, CSIW must decide whether they are 'qualified' for registration. This involves considering whether persons looking after children are suitable. CSIW carries out a number of checks to determine suitability. CSIW must also be satisfied that the premises are suitable for the provision of care. In making these decisions, CSIW registers and inspects provision against the National Minimum Standards for under eights day care and childminding.

## **Number of children permitted for childminding**

The National Minimum Standards allow childminders to care for a maximum of six children under the age of eight including their own, although CSIW will decide, in each individual case, how many children the childminder may be permitted to care for. Some childminders may work together in the same premises, and this can increase the total number of children who may be looked after on those premises.

Local planning authorities judge in each individual case, taking into account the specific circumstances and local planning policies, whether the proposed childminding would result in a material change of use and therefore require planning consent. If planning consent limits the number of children who can be minded at too low a level, the childminding business may not be financially viable.

## **Early Years Development and Childcare Partnerships and Local Authorities**

The School Standards and Framework Act 1998, as amended by the Education Act 2002, provides that an annual plan for childcare must be provided to the Assembly Government by local authorities based on a review of need. The Assembly Government expects this requirement to be met by local partnerships led by the local authority. From April 2008, this plan will form part of a wider Children and Young People's Plan. Under the Childcare Act 2006 local authorities will be under a duty to secure, as far as practicable, sufficient childcare to meet the needs of working parents.

In addition, each local authority must provide a service offering information on childcare to parents.

Guidance on these duties is currently set out in the grant scheme *Cymorth – the children and youth support fund*. There will be public consultation on Childcare Act 2006 guidance. Advice on the membership of Early Years Development and Childcare Partnerships is contained in the guidance "*Stronger Partnerships, Better Outcomes*" issued under the Children Act 2004.

**Annex C**

**CHILDMINDING QUESTIONNAIRE FORM**

**YOUR ANSWERS TO THESE QUESTIONS WILL GIVE THE LOCAL PLANNING  
AUTHORITY INFORMATION TO HELP IT TELL YOU WHETHER YOU NEED PLANNING  
PERMISSION TO CHILDMIND**

1.	Name(s) of childminder(s) and full address of childminding premises. Please also give telephone number(s) and/or e- mail address	Name(s)  Address   Tel No  E-mail
2.	Name, address and telephone number of enquirer (if different)	Name  Address   Tel No E-mail
3.	Please confirm that the childminding place is a dwelling	
4.	Intended maximum number of children who will be "minded"	
5.	Age range of children to be "minded"	
6.	In addition to the above children, will anyone else (e.g. an assistant childminder) work on or visit the premises in connection with childminding? If so, please give details.	
7.	What are the expected days and hours of childminding?	
8.	Please list the number and types of room in the dwelling	
9.	Will any particular room be set aside solely for childminding? If so, please give details.	

10.	Is the dwelling, or its curtilage, used for any <u>other</u> non-domestic purpose (For example, storage in connection with a business, keeping vehicles which are not used for domestic transport by people living at the house, office use, keeping a lot of pets, or any other activity which is in excess of normal domestic use of a dwelling by people who normally live there)? Please give details, even if you are doubtful about the relevance of any such activity.	
11.	If you answered "yes" to Question 6, please estimate how many cars would be parked at or near the dwelling	
12.	Please estimate how many "vehicle trips" would be generated daily by the childminding operation (a parent dropping off and collecting a child would count as 2 "vehicle trips")	
13.	Where do you expect that vehicles calling briefly, or parking all day, would be parked? (you may wish to include a sketch to illustrate parking arrangements)	
14.	Any other information you may wish to give (attach further notes if you wish)	

**Your Signature** ..... **Date** .....

NB. This is an informal procedure, which is intended to enable you to access professional advice about planning from local planning officers quickly, but the response to your enquiry will not be legally binding on the authority. In some cases, an informal response may not be possible.

You can get a formal response by making a formal application for a Certificate which states whether planning permission is needed, and planning officers can advise further about this.

## Annex D

Draft template for letter to be incorporated into the CSIW application pack for a prospective childminder

Dear [Chief Planning Officer of relevant LPA]

**I am applying to Care Standards Inspectorate for Wales (CSIW) to become a registered childminder. My household members are [adults and/or children and ages]. My childminding business will be run from my home at this address.**

I intend to be registered to mind a maximum of [eg. 6 children] under the age of 8 years.

I confirm that the following applies to my proposed business:

- My home will continue to be used as a private residence
- My business will not result in a marked rise in traffic or people calling
- My business will not involve any activities unusual in a residential area
- My business will not disturb my neighbours at unreasonable hours or create other forms of nuisance such as noise or smells

I can confirm that my home is still mainly a home while I carry on my business as a registered childminder.

My understanding from the Welsh Assembly Government leaflet: *Planning permission – a guide for business*, (ISBN 0 7504 3863 0) is that I do not require planning consent to undertake my childminding business as I have described it above.

However, I understand that should my business change in any way it is my duty to inform you.

**I have enclosed a completed questionnaire providing details about my business. If you need further information please contact me. If I do not hear from you by [insert date giving 21 days notice from date of letter] I will send a copy of this letter to CSIW on the assumption that planning consent is not required in order for me to start my childminding business.**

Yours sincerely

Prospective childminder