WELSH STATUTORY INSTRUMENTS

2010 No. 1703 (W.163)

SOCIAL CARE, WALES
CHILDREN AND YOUNG PERSONS, WALES

The Child Minding and Day Care (Disqualification) (Wales) Regulations 2010

Made - - - -	*28 June 2010*
Laid before the National Assembly for Wales - -	*30 June 2010*
Coming into force - -	*30 July 2010*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 79C(2) and (3), 79M(1)(c) and 104(4) of and paragraph 4 of Schedule 9A to the Children Act 1989(**1**):

Title, commencement and application

1.—(1) The title of these Regulations is the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010 and they come into force on 30 July 2010.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

"the Act" ("*y Ddeddf*") means the Children Act 1989;

"the 2000 Act" ("*Deddf 2000*") means the Criminal Justice and Court Services Act 2000(**2**);

"appropriate office" ("*swyddfa briodol*") means—

(a) if an office has been specified under paragraph (2) in relation to any person, that office;

(b) in any other case, any office of the Welsh Assembly Government;

(**1**) 1989 c. 41. Functions of the National Assembly for Wales under sections 79C(2) and (3), 79M(1)(c) and 104(4) of and paragraph 4 of Schedule 9A to the Act were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**2**) 2000 c. 43.

"direction" ("*cyfarwyddyd*") means a direction made, or which has effect as if made, under section 142 of the Education Act 2002(**3**) on the grounds set out in subsection (4)(a), (b) or (d) of that section;

"disqualified" ("*wedi ei anghymhwyso/ wedi eu hanghymhwyso*") means disqualified for registration under Part 10A of the Act for child minding or providing day care;

"relevant order" ("*gorchymyn perthnasol*") and "senior court" ("llys uwch") have the same meanings as in section 30(1) of the 2000 Act.

(2) The Welsh Ministers may specify an office controlled by them as the appropriate office in relation to any registered person or applicant for registration under Part 10A of the Act.

(3) In these Regulations a person has been "found to have committed" an offence if that person has been—

(a) convicted of an offence;

(b) found not guilty of an offence by reason of insanity;

(c) found to be under a disability and to have done the act charged against them in respect of such an offence; or

(d) on or after 6 April 2007, given a caution(**4**) in respect of an offence by a police officer.

(4) In these Regulations a person has been found to have committed an offence that is "related to" an offence if that person has been found to have committed an offence of—

(a) attempting, conspiring or incitement to commit that offence; or

(b) aiding, abetting, counselling or procuring the commission of that offence.

Care of children and offences against children or adults

3.—(1) Subject to paragraph (9) and regulation 9 a person ("P") is disqualified if any of paragraphs (2) to (8) apply.

(2) Any of the orders or other determinations specified in Schedule 1 has been made—

(a) with respect to P;

(b) which prevents P from being registered in relation to any facility in which children are looked after or from being involved in the management of or otherwise concerned with the provision of any such facility; or

(c) with respect to a child who has been in P's care.

(3) An order has been made with respect to P under section 104 of the Sexual Offences Act 2003(**5**).

(4) P has been found to have committed an offence against a child within the meaning of section 26(1) of the 2000 Act.

(5) P—

(a) has been found to have committed any offence specified in paragraph 1 of Schedule 2 or an offence that is related to such an offence; or

(b) falls within paragraph 2 of that Schedule,

despite the fact that the statutory offences in that Schedule have been repealed.

(**3**) 2002 c. 32.
(**4**) Paragraph 4(6) of Schedule 9A to the Children Act 1989 (as amended by section 102(3) of the Childcare Act 2006 (2006 c. 21)) provides that "caution" includes a reprimand or warning within the meaning of section 65 of the Crime and Disorder Act 1998.
(**5**) 2003 c. 42.

(6) P has been found to have committed any offence other than an offence referred to in paragraph (4) or (5) involving bodily injury to, or death of, a child.

(7) P has been found to have committed any offence specified in Schedule 3 or an offence that is related to such an offence.

(8) P has been—

(a) found to have committed any offence, committed against a person aged 18 or over, mentioned in paragraph 2 of Schedule 4 to the 2000 Act or an offence that is related to such an offence; or

(b) charged with any offence, committed against a person aged 18 or over, mentioned in paragraph 2 of Schedule 4 to the 2000 Act or an offence that is related to such an offence in respect of which a relevant order has been imposed by a senior court.

(9) P shall not be disqualified under paragraphs (1) to (8) in respect of any order, determination or offence if—

(a) P has successfully appealed against the order, determination or conviction;

(b) a caution in respect of that offence has been withdrawn or set aside;

(c) a direction based wholly or in part on the offence has been revoked; or

(d) an order has been made under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000(**6**) discharging P absolutely or conditionally in respect of that offence.

Overseas offences

4.—(1) Subject to regulation 9, a person ("P") is disqualified if P has been found to have done an act which—

(a) constituted an offence under the law in force in a country outside the United Kingdom; and

(b) would constitute an offence requiring disqualification from registration under these Regulations if it had been done in any part of the United Kingdom.

(2) In paragraph (1) P has been "found to have done an act which constituted an offence" if, under the law in force in a country outside the United Kingdom–

(a) P has been convicted of an offence (whether or not P has been punished for it);

(b) P has been cautioned in respect of an offence;

(c) a court exercising jurisdiction under that law has made in respect of an offence a finding equivalent to a finding that P is not guilty by reason of insanity; or

(d) such a court has made in respect of an offence a finding equivalent to a finding that P is under a disability and did the act charged against P.

(3) A person shall not be disqualified under paragraph (1) in respect of any finding if, under the law in force in the country concerned, such finding has been reversed.

(4) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of this regulation however it is described in that law.

Protection of Children Act list

5. A person who is included in the list kept under section 1 of the Protection of Children Act 1999(**7**) (list of those considered by the Secretary of State unsuitable to work with children) is disqualified.

(**6**) 2000 c. 6.
(**7**) 1999 c. 14.

Direction in relation to the employment of teachers etc

6.—(1) Subject to regulation 9, a person ("P") is disqualified if any of the following provisions of this regulation apply to P.

(2) P is subject to a direction.

(3) P's name is on any list kept for the purposes of regulations made under article 70(2)(e) or 88A(1) and (2)(b) of the Education and Libraries (Northern Ireland) Order 1986(**8**).

Persons barred from regulated activity relating to children

7. A person who is barred from regulated activity relating to children within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006(**9**) is disqualified.

Persons living or working on premises where a disqualified person lives

8. Subject to regulation 9, a person who lives–

(a) in the same household as another person who is disqualified from registration; or

(b) in a household in which any such person is employed,

is disqualified.

Waivers

9.—(1) Subject to paragraph (2), where a person ("P") would be disqualified by virtue of regulation 3, 4, 6(1) and 6(3) or 8 but has disclosed to the Welsh Ministers the facts which would otherwise cause P to be disqualified, and the Welsh Ministers have given written consent and have not withdrawn that consent, then the person is not, by reason of the facts so disclosed, to be regarded as disqualified for the purposes of these Regulations.

(2) In relation to a person who would be disqualified by virtue of regulation 3(4), this regulation shall not apply where a court has made an order under section 28(4), 29(4) or 29A(2) of the 2000 Act.

(3) A person is not disqualified if, prior to 1 April 2002, the person—

(a) disclosed the facts to an appropriate local authority under paragraph 2 of Schedule 9 to the Act which would disqualify the person under these Regulations; and

(b) obtained the written consent of that local authority.

Prescribed determination

10. For the purposes of section 79M(1)(c) of the Act (appeals to the Tribunal), a determination in relation to the disqualification of a person for registration for child minding or providing day care under Schedule 9A of the Act is a prescribed determination.

Duty of disclosure

11.—(1) A person who is registered under Part 10A of the Act ("registered person") must provide the following information to the Welsh Ministers—

(**8**) S.I. 1986/594 (N.I.3). Article 70(2)(e) was substituted by article 8 of the Education (Northern Ireland) Order 1987 (S.I. 1987/167) (N.I.2). The 1986 Order was amended by article 15 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (S.I. 2003/417) (N.I.4).

(**9**) 2006 c. 47.

(a) details of any order, determination, conviction or other ground for disqualification from registration made or applying in relation to a person listed in paragraph (2) which results in that person being disqualified from registration under these Regulations;

(b) the date when the order, determination or conviction was made or when any other ground for disqualification from registration arose;

(c) the body or court by which the order, determination or conviction was made and the sentence, if any, imposed;

(d) in relation to an order or conviction, a copy of the relevant order or court order certified by the issuing body or court.

(2) The persons in respect of whom the information referred to in paragraph (1) must be provided are–

(a) the registered person; and

(b) any person who lives in the same household as the registered person or who is employed in that household.

(3) The information referred to in paragraph (1) must be provided to the Welsh Ministers as soon as reasonably practicable, but in any event within 14 days of the time when the registered person became aware of that information or ought reasonably to have become aware of it if the registered person had made reasonable enquiries.

(4) A person who without reasonable excuse fails to comply with the requirements of this regulation is guilty of an offence.

(5) A person found guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Amendment of the Disqualification from Caring for Children (Wales) Regulations 2004

12.—(1) The Disqualification from Caring for Children (Wales) Regulations 2004(**10**) are amended as follows.

(2) Omit regulations 5 to 8.

Huw Lewis
Deputy Minister for Children under authority of the Minister for Children, Schools and Lifelong Learning, one of the Welsh Ministers

28 June 2010

(**10**) S.I. 2004/2695 (W.235).