WELSH STATUTORY INSTRUMENTS

2009 No. 2541 (W.205)

CHILDREN AND YOUNG PERSONS, WALES

SOCIAL CARE, WALES

The Children Act 1989, Care Standards Act 2000 and Adoption and Children Act 2002 (Miscellaneous Amendments) (Wales) Regulations 2009

Made - - - -	*15 September 2009*
Laid before the National Assembly for Wales - -	*21 September 2009*
Coming into force - -	*12 October 2009*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 68 (1) and (2), 79C (2) and (3), 79M (1) (c) and 104 (4) of and paragraph 4 of Schedule 9A to the Children Act 1989 (**1**), sections12 (2) (a), 16 (1) (a), 22(1), (2) (a), (b), (d) and (e), 48 (1) (a) and 118 (1), (6) (a) of the Care Standards Act 2000 (**2**)and sections 9 (1) , 10 (1) (a), (3) (a) and (e), 140 (1) and (7) of the Adoption and Children Act 2002(**3**):

PART 1

Introduction

Title, commencement and application

1.—(1) The title of these Regulations is the Children Act 1989, Care Standards Act 2000 and Adoption and Children Act 2002 (Miscellaneous Amendments) (Wales) Regulations 2009 and they come into force on 12 October 2009.

(2) These Regulations apply in relation to Wales.

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

(**2**) 2000 c. 14. Functions of the National Assembly for Wales under these sections of the Care Standards Act 2000 were transferred to the Welsh Minsters by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**3**) 2002 c 38. Functions of the National Assembly for Wales under these sections of the Adoption and Children Act 2002 were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

PART 2

Child minding and day care

Amendments to the Child Minding and Day Care (Wales) Regulations 2002

2.—(1) The Child Minding and Day Care (Wales) Regulations 2002(**4**) are amended as follows.

(2) In regulation 4 (registered person — suitability)—

(a) for paragraph (3) (c) substitute—

"(c) full and satisfactory information or documentation, as the case may be, is available in relation to the person—

(i) except where paragraph (5) applies, in respect of each of the matters specified in paragraphs 1 to 6 of Schedule 2;

(ii) where paragraph (5) applies, in respect of each of the matters specified in paragraphs 1, 2 and 4 of Schedule 2.";

(b) omit paragraph (4).

(3) In regulation 4B(**5**) (person in charge — suitability)—

(a) for paragraph (3) (c) substitute—

"(c) full and satisfactory information or documentation, as the case may be, is available in relation to the person in respect of each of the matters specified in paragraphs 1 to 6 of Schedule 2.";

(b) omit paragraph (4).

(4) In regulation 16 (suitability of workers)—

(a) for paragraph (2) (d) substitute—

"(d) full and satisfactory information or documentation, as the case may be, is available in relation to the person in respect of each of the matters specified in paragraphs 1 to 6 of Schedule 2.";

(b) in paragraph (4) (b), for the words "unless paragraph (5) applies" substitute "unless paragraph (5) or (5A) applies.";

(c) for paragraph (5) (b) substitute—

"(b) full and satisfactory information in relation to that person has been obtained in respect of the matters specified in paragraphs 1 and 2 of Schedule 2.".

(5) In Schedule 2 (information required in respect of persons seeking to act or work for child minders or providers of day care)—

(a) for paragraph 2 substitute—

"**2.** Either—

(a) where the certificate is required for a purpose related to registration under Part 10A of the Act or the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002(**6**) an enhanced criminal record certificate issued under section 113B of the Police Act 1997(**7**) which

(**4**) S.I. 2002/812 (W.92). Relevant amending instruments are S.I. 2002/2171 (W.218), S.I. 2002/2622 (W.254), S.I. 2003/2708 (W.259) and 2004/2414 (W.222).
(**5**) Regulation 4B inserted by S.I. 2003/2708 (W.259).
(**6**) S.I. 2002/233. Regulation 5A was inserted by S.I. 2006/748. Further amendments are being drafted to regulation 5A and these will be in force from 12 October 2009.
(**7**) 1997 c. 50. Section 113B was inserted by the Serious Organised Crime and Police Act 2005 (c. 15). Sub-section (2) of section 113B is amended by the Safeguarding Vulnerable Groups Act 2006.

includes suitability information relating to children (within the meaning of section 113BA(2)(**8**) of that Act) in respect of which less than three years have elapsed since it was issued; or

(b) in any other case, a criminal record certificate issued under section 113A(**9**) of the Police Act 1997 in respect of which less than three years have elapsed since it was issued.";

(b) omit paragraphs 7 and 8.

Amendments to the Disqualification from Caring for Children (Wales) Regulations 2004

3.—(1) The Schedule to the Disqualification from Caring for Children (Wales) Regulations 2004(**10**) is amended as follows.

(2) In paragraph 3, for "78C" substitute "79C"

(3) For paragraph 33 substitute—

"**Education Act 2002 direction**

33. A person who is subject to a direction made, or which has effect as if made, under section 142 of the Education Act 2002(**11**) on the grounds set out in subsection (4) (a), (b) or (d) of that section."

(4) For paragraph 34 substitute—

"**Safeguarding Vulnerable Groups Act 2006 children's barred list**

34. 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(**12**)

PART 3

Establishments and agencies — children

Amendment to the Adoption Agencies (Wales) Regulations 2005

4.—(1) The Adoption Agencies (Wales) Regulations 2005(**13**) are amended as follows.

(2) For paragraph (1) of regulation 23 (requirement to carry out police checks) substitute—

"(1) In respect of the prospective adopter and any other member of the prospective adopter's household who is aged 18 or over, an adoption agency must obtain an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act).".

(**8**) Section 113BA was inserted by section 63(1) of, and paragraph 14 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006 (c. 47).
(**9**) Section 113A was inserted by the Serious Organised Crime and Police Act 2005 (c. 15).
(**10**) S.I. 2004/2695 (W.235).
(**11**) 2002 c. 32.
(**12**) 2006 c. 47.
(**13**) S.I. 2005/1313 (W.95).

Amendment to the Adoption Support Agencies (Wales) Regulations 2005

5.—(1) The Adoption Support Agencies (Wales) Regulations 2005(**14**) are amended as follows.

(2) For paragraph 2 of Schedule 2 (information required in respect of the responsible individual or persons seeking to manage or work for the purposes of an agency) substitute—

"**2.** Either—

(a) where the certificate is required for a purpose related to registration under Part 2 of the 2000 Act or the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act) in respect of which less than 3 years have elapsed since it was issued; or

(b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997 in respect of which less than 3 years have elapsed since it was issued.".

Amendments to the Children's Homes (Wales) Regulations 2002

6.—(1) The Children's Homes (Wales) Regulations 2002(**15**) are amended as follows.

(2) In regulation 6 (fitness of registered provider)—

(a) for paragraph (3) (c) substitute—

"(c) full and satisfactory information or documentation, as the case may be, is available in relation to the person in respect of each of the matters specified in paragraphs 1 to 5 and 6 of Schedule 2.";

(b) omit paragraph (4) .

(3) In regulation 8 (fitness of manager)—

(a) for paragraph (2) (c) substitute—

"(c) full and satisfactory information or documentation, as the case may be, is available in relation to the person in respect of each of the matters specified in paragraphs 1 to 6 of Schedule 2."

(b) for paragraph (2E)(**16**) substitute—

"(2E) A person is not fit to manage a children's home unless he or she is registered as a manager with the Care Council for Wales." ;

(c) omit paragraph (3).

(4) In regulation 26 (fitness of workers)—

(a) for paragraph (2) (d) substitute—

"(d) subject to paragraph (2G), full and satisfactory information or documentation, as the case may be, is available in relation to the person in respect of each matter specified in paragraphs 1 to 6 of Schedule 2"

(b) in paragraph (4) (b), for the words "unless paragraph (5) applies" substitute "unless paragraph (5) or (5A) applies.";

(c) for paragraph (5) (b) substitute—

(**14**) S.I. 2005/1514 (W.118).
(**15**) S.I. 2002/327 (W.40). Relevant amending instruments are S.I. 2002/2622 (W.254), S.I. 2004/2414 (W.222) and S.I. 2007/311 (W.28).
(**16**) Paragraph (2E) of regulation 8 was inserted by S.I. 2007/311 (W.28).

"(b) full and satisfactory information in relation to that person has been obtained in respect of the matters specified in paragraphs 1 and 2 of Schedule 2." .

(5) In Schedule 2 (information required in respect of persons seeking to carry on, manage or work at a children's home)—

(a) for paragraph 2 substitute—

"**2.** Either—

(a) where the certificate is required for a purpose related to registration under Part 2 of the Act or the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act) and, where applicable, suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act) in respect of which less than three years have elapsed since it was issued ; or

(b) in any other case, a standard criminal record certificate issued under section 113A of the Police Act 1997 in respect of which less than three years have elapsed since it was issued." ;

(b) omit paragraphs 7 and 8.

Amendments to the Fostering Services (Wales) Regulations 2003

7.—(1) The Fostering Services (Wales) Regulations 2003(**17**) are amended as follows.

(2) For paragraph 2 of Schedule 1 (information required in respect of persons seeking to carry on, manage or work for the purposes of a fostering service) substitute—

"**2.** Either —

(a) where the certificate is required for a purpose related to registration under Part 2 of the 2000 Act or the position falls within regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act); or

(b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997." .

(3) For paragraph 13 of Schedule 3 (information as to prospective foster parent and other members of the prospective foster parent's household and family) substitute—

"**13.** In respect of the prospective foster parent and any other member of the prospective foster parent's household who is aged 18 or over, an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes suitability information relating to children (within the meaning of section 113BA(2) of that Act)." .

Amendment to the Local Authority Adoption Service (Wales) Regulations 2007

8.—(1) The Local Authority Adoption Service (Wales) Regulations 2007(**18**) are amended as follows.

(**17**) S.I. 2003/237 (W.35).
(**18**) S.I. 2007/1357 (W.128).