WELSH STATUTORY INSTRUMENTS

2004 No. 2695 (W.235)

SOCIAL CARE, WALES
CHILDREN AND YOUNG PERSONS, WALES

The Disqualification from Caring for Children (Wales) Regulations 2004

Made - - - -	*19 October 2004*
Coming into force - -	*20 October 2004*

The National Assembly for Wales("the National Assembly"), in exercise of the powers conferred upon the Secretary of State 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**) and which are exercisable by the National Assembly in relation to Wales (**2**) hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Disqualification from Caring for Children (Wales) Regulations 2004 and shall come into force on 20 October 2004.

(2) These Regulations apply in relation to Wales.

Revocation

2. The Disqualification from Caring for Children (Wales) Regulations 2002(**3**) are hereby revoked.

Interpretation

3.—(1) In these Regulations —

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

(**1**) 1989 c. 41.

(**2**) These functions are, so far as exercisable in relation to Wales, transferred to the National Assembly by article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999, S.I.1999/672. Section 79M and Schedule 9A were inserted into the Act by section 79 of and Schedule 3 to the Care Standards Act 2000 (c. 14). See section 120(2) of the Care Standards Act 2000 for the application of S.I. 1999/ 672 to the Act as amended by that Act. For the meaning of "prescribed" see section 105(1) of the 1989 Act and for the meaning of "regulations" see section 79B(7) of that Act, inserted by section 79 of the Care Standards Act 2000.

(**3**) S.I. 2002/896 (W.102).

"the 2000 Act" ("*Deddf 2000*") means the Criminal Justice and Court Services Act 2000(**4**);

"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 National Assembly;

"disqualification order", "qualifying sentence", "relevant order" and "senior court" ("*gorchymyn datgymhwyso*", "*dedfryd gymhwysol*", "*gorchymyn perthnasol*", "*prif lys*") have the same meanings as in section 30 of the 2000 Act;

"disqualified" ("*wedi'i ddatgymhwyso/ wedi'u datgymhwyso*") means disqualified for registration under Part XA of the Act for child minding or providing day care;

"the National Assembly" ("*y Cynulliad Cenedlaethol*") means the National Assembly for Wales;

"offence against a child" ("*tramgwydd yn erbyn plentyn*") in relation to offences committed in England and Wales has the meaning given in section 26 of the 2000 Act;

"rehabilitation period" ("*cyfnod adsefydlu*") has the same meaning as in the Rehabilitation of Offenders Act 1974(**5**);

"Tribunal" ("*Tribiwnlys*") means the Tribunal established by section 9 of the Protection of Children Act 1999(**6**).

(2) The National Assembly may specify an office controlled by it as the appropriate office in relation to any registered person or applicant for registration under Part XA of the Act.

Disqualification from fostering a child privately

4.—(1) For the purposes of section 68 of the Act (persons disqualified from being private foster parents) a person is disqualified from fostering a child privately if —

(a) that person has been convicted of any offence mentioned in Part I of the Schedule to these Regulations; or

(b) that person is a person mentioned in Parts II or III of the Schedule to these Regulations.

(2) A person who has successfully appealed against a conviction or determination is not disqualified under paragraph (1) in respect of that conviction or determination.

Disqualification for registration for child minding and providing day care

5.—(1) For the purposes of paragraph 4 of Schedule 9A to the Act (disqualification for registration) a person is, subject to regulation 6, disqualified if —

(a) that person has been convicted of any offence mentioned in Part I of the Schedule to these Regulations;

(b) that person is a person mentioned in Parts II or III of the Schedule to these Regulations; or

(c) that person has at any time been disqualified from fostering a child privately.

(2) Subject to regulation 6, a person who lives —

(a) in the same household as a person who is disqualified under paragraph (1); or

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

is disqualified.

(**4**) 2000 c. 43.
(**5**) 1974 c. 53.
(**6**) 1999 c. 14.

(3) A person who has successfully appealed against a conviction or determination is not disqualified under paragraph (1) in respect of that conviction or determination.

Waivers

6.—(1) Where a person would be disqualified by virtue of regulation 5 but that person has disclosed to the National Assembly the facts that would give rise to the disqualification and the National Assembly has given written consent and has not withdrawn that consent, then that person is not, by reason of the facts so disclosed, to be regarded as disqualified for the purpose of these Regulations.

(2) A person is not disqualified under regulation 5 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 regulation 5; and

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

Duty of Disclosure

7.—(1) A person who has been registered as a childminder or day care provider or employed in connection with the provision of day care pursuant to section 79D of the Act has a continuing duty throughout the period of registration to provide the National Assembly with the information listed in subsection (2) in relation to:

(a) any order made against the registered person;

(b) any order made against a person who lives or works in the same household of which the registered person is aware or could reasonably be expected to be aware;

(c) any offence of which the registered person has been convicted; and

(d) any offence of which a person who lives or works in the same household has been convicted of which the registered person is aware or could reasonably be expected to be aware

which is a ground for disqualification under these Regulations.

(2) The information which must be provided to the appropriate office of the National Assembly for the purposes of paragraph (1) is —

(a) details of the precise nature of the order or conviction;

(b) when the order was made and by which body or Court;

(c) what sentence was imposed;

(d) where available, a certified copy of the relevant Order or Court Order evidencing the conviction or other order.

(3) The information referred to in paragraph (2) must be provided to the National Assembly as soon as reasonably practicable.

(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.

Prescribed Determinations

8. 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.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(**7**)

D.Elis-Thomas
19 October 2004 The Presiding Officer of the National Assembly

(**7**) 1998 c. 38.

SCHEDULE Regulations 4 and 5

PART I

SPECIFIED OFFENCES

Offences Against Children

(a) (a) any offence against a child within the meaning of section 26(1) of the 2000 Act; or

(b) any offence other than an offence referred to in (a) involving bodily injury to, or death of a child; save that

a person is not disqualified under this paragraph in respect of any offence if that person has successfully appealed against the disqualification order (pursuant to section 31 of the 2000 Act) or if the Tribunal has determined (pursuant to section 32 of that Act) that the person in question is no longer to be subject to the disqualification order (unless the High Court has restored the disqualification order pursuant to section 34 of that Act following such a determination).

Other Offences

2. Any offence —

(a) committed against a person aged 18 or over and mentioned in paragraph 2 of Schedule 4 to the 2000 Act in respect of which a qualifying sentence has been imposed by a senior court; or

(b) with which a person has been charged, against a person aged 18 or over and mentioned in paragraph 2 of Schedule 4 to the 2000 Act, in respect of which a relevant order has been imposed by a senior court; save that

a person is not disqualified under this paragraph in respect of any offence if that person has successfully appealed against the disqualification order (pursuant to section 31 of the 2000 Act) or if the Tribunal has determined (pursuant to section 32 of that Act) that the person is no longer to be subject to the disqualification order, (unless the High Court has restored the disqualification order pursuant to section 34 of that Act following such a determination), and further a person ceases to be disqualified under this paragraph where the rehabilitation period applicable to the conviction under the Rehabilitation of Offenders Act 1974 has expired.

3. An offence under any of the following —

(a) the Sexual Offences Act 2003(**8**);

(b) section 49 or 50(9) of the Act (offences relating to the abduction of a child in care);

(c) section 70 of the Act, section 16 of the Foster Children Act 1980(**9**), or section 14 of the Children Act 1958(**10**) (offences relating to private fostering);

(d) sections 78C, 79D, 79E and 79F of the Act (offences relating to child minding and day care); or

(e) paragraph 1(5) of Schedule 5 to, section 63(10) of, or paragraph 2(3) of Schedule 6 to, the Act (offences relating to voluntary homes and children's homes)(**11**).

(**8**) 2003 c. 42.
(**9**) 1980 c. 6. This provision was repealed by the Children Act 1989.
(**10**) 1958 c. 65. This provision was repealed by the Foster Children Act 1980.
(**11**) These provisions were repealed by the Care Standards Act 2000 with effect from 1st April 2002 (S.I. 2001/3852).