WELSH STATUTORY INSTRUMENTS

2002 No. 2622 (W.254)

SOCIAL CARE, WALES
CHILDREN AND YOUNG PERSONS, WALES
PUBLIC HEALTH, WALES

The Children Act 1989 and the Care Standards Act 2000 (Miscellaneous Regulations) (Amendment) (Wales) Regulations 2002

Made - - - -	*17th October 2002*
Coming into force - -	*18th October 2002*

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 12(2)(a), 16(1)(a), 22(1), (2)(a) and (b), (7)(c) and 118(5) and (6) of the Care Standards Act 2000(**1**) and sections 79C(2), (3)(b), (f) and (g), 79E (2)(a) and 104(4) of the Children Act 1989(**2**) being of the opinion that these Regulations do not effect any substantial change in the provision made by other regulations made under section 22 of the 2000 Act(**3**), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Children Act 1989 and Care Standards Act 2000 (Miscellaneous Regulations) (Amendment) (Wales) Regulations 2002 and shall come into force on 18th October 2002.

Amendment of the Care Homes (Wales) Regulations 2002

2.—(1) The Care Homes (Wales) Regulations 2002(**4**) are amended in accordance with the following provisions of this regulation.

(**1**) 2000 c. 14. The powers are exercisable by the appropriate Minister. The "appropriate Minister" is defined in s.121(1) as the Assembly in relation to Wales. The "Assembly" is defined in s.5(b) as the National Assembly for Wales. *See* s.121(1) of the 2000 Act for the definitions of "prescribed" and "regulations".

(**2**) 1989 c. 41. The powers under s.79C are exercisable by the Assembly. The "Assembly" is defined in s.79B(2) as the National Assembly for Wales. *See* s.105(1) of the 1989 Act for the definition of "prescribed" and s.79B(7) for the definition of "regulations".

(**3**) Under section 22(9) of the 2000 Act the appropriate Minister shall consult any person he considers appropriate before making any regulations under section 22, unless the regulations amend other regulations made under that section and in his opinion the regulations do not effect any substantial change in the provision made by those regulations. These Regulations amend other regulations made under section 22.

(**4**) S.I. 2002 No. 324 (W.37).

(2) In regulation 7 (fitness of registered provider)—

(a) after paragraph (3)(c)(ii) the following paragraph is inserted—

"(iii) and further, where paragraph (4) applies, in a written report of a check on the lists maintained pursuant to section 1 of the Protection of Children Act 1999(**5**) and regulations made under section 218 of the Education Reform Act 1988(**6**).";

(b) for paragraph (4) substitute—

"This paragraph applies where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued.".

(3) In regulation 9 (fitness of registered manager)—

(a) after paragraph (2)(c)(ii) insert a new paragraph (iii) as follows—

"(iii) and further, where paragraph (3) applies, in a written report of a check on the lists maintained pursuant to section 1 of the Protection of Children Act 1999 and regulations made under section 218 of the Education Reform Act 1988.";

(b) for paragraph (3) substitute—

" This paragraph applies where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued.".

(4) In regulation 19 (fitness of workers)—

(a) in paragraph (1) at the beginning insert "Subject to paragraphs (5) and (5A),"

(b) for paragraph 3 substitute—

"This paragraph applies where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued".

(c) in sub-paragraph (a) of paragraph (4) for "children's home" substitute "care home";

(d) in sub-paragraph (b) of paragraph 4 after "(5)" insert "or (5A)"

(e) in paragraph (5), for "paragraph" where it first appears substitute "paragraphs (1) and"

(f) after paragraph (5) insert a new paragraph (5A) as follows—

"(5A) Alternatively to paragraph (5), where the following conditions apply, the registered person may permit a person to start work at a care home notwithstanding paragraphs (1) and (4)(b)—

(a) paragraph (3) of this regulation applies;

(b) full and satisfactory information in relation to that person has been obtained in respect of the matters set out in paragraphs 1, 4 and 6 of Schedule 2;

(c) the person has provided—

(i) two written references, including a reference from the last employer, if any, and

(ii) a written declaration of the details of any criminal offences of which the person has been convicted, including details of any convictions which are spent within the meaning of section 1 of the Rehabilitation of Offenders Act 1974 and which may be disclosed by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 or in respect of which the person has been cautioned and which, at the time the caution was given, the person admitted;

(**5**) 1999 c. 14.
(**6**) 1988 c. 40.

(d) in the reasonable view of the registered person the interests of the service will not be met unless the person can be appointed; and

(e) pending receipt of and being satisfied with regard to the certificate referred to in paragraph (3), the registered person ensures that the person is appropriately supervised while carrying out his or her duties."

(5) In Schedule 2 (information and documents to be available in respect of persons carrying on, managing or working at care homes)—

(a) in the concluding words of paragraph 2 for "where applicable" there is substituted "to the extent permitted under the Police Act 1997";

(b) for paragraph 7 substitute—

"**7.** A police check being a report produced by or on behalf of a chief officer of police or other member of a police force within the meaning of the Police Act 1996(**7**) which records, as at the time the report is produced, all criminal offences

(a) for which the person had been convicted including convictions which are spent within the meaning of the Rehabilitation of Offenders Act 1974(**8**) and which may be disclosed by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(**9**); or

(b) in respect of which the person had been cautioned and which, at the time the caution was given, the person admitted."

Amendment of the Children's Homes (Wales) Regulations 2002

3.—(1) The Children's Homes (Wales) Regulations 2002(**10**) are amended in accordance with the following provisions of this regulation.

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

(a) after paragraph (3)(c)(ii) the following paragraph is inserted—

"(iii) and further, where paragraph (4) applies, in a written report of a check on the lists maintained pursuant to section 1 of the Protection of Children Act 1999 and regulations made under section 218 of the Education Reform Act 1988.";

(b) for paragraph (4) substitute—

"This paragraph applies where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued.".

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

(a) after paragraph (2)(c)(ii) the following paragraph is inserted—

"(iii) and further, where paragraph (4) applies, in a written report of a check on the lists maintained pursuant to section 1 of the Protection of Children Act 1999 and regulations made under section 218 of the Education Reform Act 1988.";

(b) for paragraph (3) substitute—

"This paragraph applies where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued.".

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

(**7**) 1996 c. 16.
(**8**) 1974 c. 53.
(**9**) S.I. 1975/1023. At the coming into force of these regulations the following instruments have made relevant amendments to the Order: S.I. 1986/1249; 1986/2286 and S.I. 2001/1192.
(**10**) S.I. 2002 No. 327 (W.40).

(a) in paragraph (1), at the beginning insert—

"Subject to paragraphs (5) and (5A)"

(b) for paragraph (3) substitute—

"This paragraph applies where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued";

(c) in paragraph (5) for the word "paragraph" where it appears substitute the words "paragraphs (1) and";

(d) after paragraph (5) insert a new paragraph (5A) as follows—

"(5A) Alternatively to paragraph (5) where the following conditions apply, the registered person may permit a person to start work at a children's home notwithstanding paragraphs (1) and (4)(b)—

(a) paragraph (3) of this regulation applies;

(b) full and satisfactory information in relation to that person has been obtained in respect of the matters set out in paragraphs 1, 4 and 6 of Schedule 2;

(c) the person has provided—

(i) two written references, including a reference from the last employer, if any, and

(ii) a written declaration of the details of any criminal offences of which the person has been convicted, including details of any convictions which are spent within the meaning of section 1 of the Rehabilitation of Offenders Act 1974 and which may be disclosed by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 or in respect of which the person has been cautioned and which, at the time the caution was given, the person admitted;

(d) in the reasonable view of the registered person the interests of the service will not be met unless the person can be appointed; and

(e) pending receipt of, and satisfying himself or herself with regard to, the certificate referred to in paragraph (3), the registered person ensures that the person is appropriately supervised while carrying out his or her duties.".

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

(a) in the concluding words of paragraph 2 for "where applicable" substitute "to the extent permitted under the Police Act 1997";

(b) for paragraph 7 substitute—

"**7.** A police check being a report produced by or on behalf of a chief officer of police or other member of a police force within the meaning of the Police Act 1996 which records, as at the time the report is produced, all criminal offences—

(a) for which the person had been convicted including convictions which are spent within the meaning of the Rehabilitation of Offenders Act 1974 and which may be disclosed by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975; or

(b) in respect of which the person had been cautioned and which, at the time the caution was given, the person admitted.".

Amendment of the Private and Voluntary Health Care (Wales) Regulations 2002

4.—(1) The Private and Voluntary Health Care (Wales) Regulations 2002(**11**) are amended in accordance with the following provisions of this regulation.

(2) In regulation 9 (fitness of registered provider)—

(a) after paragraph (3)(c)(ii) the following paragraph is inserted—

"(iii) and further, where paragraph (4) applies, in a written report of a check on the lists maintained pursuant to section 1 of the Protection of Children Act 1999 and regulations made under section 218 of the Education Reform Act 1988.";

(b) For paragraph (4) substitute—

"This paragraph applies where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued.".

(3) In regulation 11 (fitness of manager)—

(a) after paragraph (2)(c)(ii) the following paragraph is inserted—

"(iii) and further, where paragraph (4) applies, a written report of a check on the lists maintained pursuant to section 1 of the Protection of Children Act 1999 and regulations made under section 218 of the Education Reform Act 1988.";

(b) for paragraph (3) substitute—

"This paragraph applies where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued.".

(4) In regulation 18 (fitness of workers)—

(a) in paragraph (1), at the beginning insert—

"Subject to paragraphs (5) and (5A)";

(b) for paragraph (3) substitute—

"This paragraph applies where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued";

(c) in paragraph (5) for "paragraph" where it first appears substitute "paragraphs (1) and";

(d) after paragraph (5) insert a new paragraph (5A) as follows—

"(5A) Alternatively to paragraph (5) where the following conditions apply, the registered person may permit a person to start work in or for the purposes of the establishment notwithstanding paragraphs (1) and (4)(b)—

(a) paragraph (3) of this regulation applies;

(b) full and satisfactory information in relation to that person has been obtained in respect of the matters set out in paragraphs 1, 4 and 6 of Schedule 2;

(c) the person has provided—

(i) two written references, including a reference from the last employer, if any, and

(ii) a written declaration of the details of any criminal offences of which the person has been convicted, including details of any convictions which are spent within the meaning of section 1 of the Rehabilitation of Offenders Act 1974 and which may be disclosed by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 or in respect of which the person has been cautioned and which, at the time the caution was given, the person admitted;

(**11**) S.I. 2002 No. 325 (W.38).