
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.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

19 October 2004

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

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).

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4. An offence in relation to a children's home under or by virtue of any of the following provisions of the Care Standards Act 2000 —

- (a) section 11(1) (failure to register);
- (b) section 24 (failure to comply with conditions);
- (c) section 25 (contravention of regulations);
- (d) section 26 (false descriptions of establishments and agencies); or
- (e) section 27 (false statements in applications).

Offences in Scotland

- 5. An offence of rape.
- 6. An offence specified in Schedule 1 to the Criminal Procedure (Scotland) Act 1995(12).
- 7. The common law offence of plagium (theft of a child below the age of puberty).
- 8. An offence under section 52 or 52A of the Civic Government (Scotland) Act 1982 (offences relating to indecent photographs of children)(13).
- 9. An offence under section 3 of the Sexual Offences (Amendment) Act 2000(14) (abuse of trust).
- 10. An offence under any of the following —
 - (a) section 81, 83 or 89 of the Children (Scotland) Act 1995(15) or section 17(8) or 71 of the Social Work (Scotland) Act 1968(16) (harbouring offences);
 - (b) section 6 of the Child Abduction Act 1984 (taking or sending child out of United Kingdom)(17);
 - (c) sections 78, 79D, 79E and 79F of the Act (offences relating to child minding and day care); or
 - (d) section 15 of the Foster Children (Scotland) Act 1984(18) (offences relating to private fostering).
- 11. An offence under or by virtue of section 60(3), 61(3) or 62(6) of the Social Work (Scotland) Act 1968 (offences relating to residential and other establishments).
- 12. An offence in relation to a care home service, child minding or day care of children, under or by virtue of any of the following provisions of the Regulation of Care (Scotland) Act 2001(19) —
 - (a) section 21 (offences relating to registration);
 - (b) section 22 (false statements in applications); or
 - (c) section 29(10) (offences in regulations).

Offences in Northern Ireland

13. An offence specified in the Schedule to the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003(20).

(12) 1995 c. 46.

(13) 1982 c. 45. Section 52A was inserted by section 161 of the Criminal Justice Act 1988 (c. 33).

(14) 2000 c. 44.

(15) 1995 c. 36.

(16) 1968.c.49. Sections 17(8) and 71 of the 1968 Act were repealed by the Children (Scotland) Act 1995.

(17) 1984 c. 37.

(18) 1984 c. 56.

(19) 2001 asp.8.

(20) S.I.2003/417 (N.I. 4).

14. An offence under any of the following —

- (a) article 68 or 69(9) of the Children (Northern Ireland) Order 1995 (offences relating to the abduction of a child in care)(**21**);
- (b) article 132 of the Children (Northern Ireland) Order 1995, or section 14 of the Children and Young Persons Act (Northern Ireland) 1968 (offences relating to child minding and day care)(**22**);
- (c) article 117 of the Children Northern Ireland) Order 1995, or section 9(1) of the Children and Young Persons Act (Northern Ireland) 1968 (offences relating to private fostering); or
- (d) article 79(3), 81(4), 95(3) or 97(4) of the Children (Northern Ireland) Order 1995, or section 127(5) or 129(3) of the Children and Young Persons Act (Northern Ireland) 1968 (offences relating to voluntary homes and children's homes).

Offences in the Channel Islands

15. An offence contrary to —

- (a) Part 7 of the Children's Jersey Law 1969(**23**); or
- (b) the Day Care of Children (Jersey) Law 2002(**24**).

16. An offence contrary to —

- (a) the 'Loi pour la Puniton d'inceste' (Law for the Punishment of Incest) 1909(**25**);
- (b) the 'Loi Relative a la Protection des Femmes et des Filles Mineures' (Law for the Protection of Women and Young Girls) 1914(**26**);
- (c) the 'Loi relative a la Sodomie' (Law relating to Sodomy) 1929(**27**);
- (d) article 7, 9, 10, 11 or 12, section 1 of article 41 or section 1, 2, 3 or 4 of article 51 of the 'Loi ayant rapport a la protection des Enfants et des Jeunes Personnes' (Law relating to the protection of Children and Young Persons) 1917(**28**);
- (e) the Children and Young Persons (Guernsey) Law 1967(**29**); or
- (f) the Protection of Children (Bailiwick of Guernsey) Law 1985(**30**).

Offences in the Isle of Man

17. An offence specified in Schedule 8 to the Children and Young Persons Act 2001 (an Act of Tynwald)(**31**).

(21) S.I. 1995/755 (N.I.2).

(22) 1968 c.

(23) Jersey Law 16/1969.

(24) Jersey Law 51/2002

(25) Orders in Council Vol IV p.288.

(26) Orders in Council Vol V p.74

(27) Orders in Council Vol VIII p.273

(28) Orders in Council Vol V p.342 as amended by Loi Supplémentaire a la Loi ayant rapport a la Protection des Enfants et des Jeunes Personnes 1937, Orders in Council Vol XI p.116 and the Protection of Children and Young Persons (Amendment) Law 1955, Orders in Council Vol XVI p.277.

(29) Order in Council 1 of 1967.

(30) Orders in Council Vol XXIX as amended by The Administration of Justice (Bailiwick of Guernsey) (Law) 1985 Order in Council 1 of 1991.

(31) 2001 c. 20 (Isle of Man).

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Other Offences

18. An offence contrary to section 170 of the Customs and Excise Management Act 1979⁽³²⁾ in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions)⁽³³⁾ where the prohibited goods included indecent photographs of children under the age of 16.

19. An offence by virtue of —

- (a) section 7 of the Sex Offenders Act 1997 (extension of jurisdiction: England and Wales and Northern Ireland)⁽³⁴⁾; or
- (b) section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (commission of certain sexual offences outside the United Kingdom)⁽³⁵⁾.

20. An offence contrary to section 32(3) of the Children and Young Persons Act 1969 (detention of absentees).

PART II

RELEVANT PERSONS

21. The person is a parent of a child in respect of whom an order has been made at any time under —

- (a) section 31(1)(a) of the Act (care order);
- (b) section 31(1)(b) of the Act (supervision order);
- (c) section 44(1) of the Act (emergency protection order);
- (d) article 50(1)(a) of the Children (Northern Ireland) Order 1995 (care order); or
- (e) section 31 of the Children and Young Persons Act 2001 (an Act of Tynwald).

22. One of the following orders has been made at any time with respect to a child so as to remove the child from the care of, or prevent the child living with the person —

- (a) an order under section 31(1)(a) of the Act;
- (b) any order that would have been deemed to be a care order by virtue of paragraph 15 of Schedule 14 to the Act (transitional provisions for children in compulsory care) had it been in force immediately before the day on which Part IV of the Act came into force⁽³⁶⁾;
- (c) a supervision order which imposes a residence requirement under paragraph 5 of Schedule 6 to the Powers of Criminal Courts (Sentencing) Act 2000⁽³⁷⁾ or section 12AA of the Children and Young Persons Act 1969⁽³⁸⁾ (requirement to live in local authority accommodation);
- (d) an order under article 50(1)(a) of the Children (Northern Ireland) Order 1995;
- (e) a fit person order, a parental rights order or a training school order under the Children and Young Persons Act (Northern Ireland) 1968⁽³⁹⁾
- (f) a child protection order under section 57 of the Children (Scotland) Act 1995;

⁽³²⁾ 1979 c. 2.

⁽³³⁾ 1876 c. 36.

⁽³⁴⁾ 1997 c. 51.

⁽³⁵⁾ 1995 c. 39.

⁽³⁶⁾ Part IV of the Act came into force on 14 October 1991.

⁽³⁷⁾ 2000 c. 6.

⁽³⁸⁾ . Section 12AA was repealed by the Powers of Criminal Courts (Sentencing) Act 2000.

⁽³⁹⁾ 1968 c. 34 (N.I.). The provisions relating to these orders were repealed by the Children (Northern Ireland) Order 1995 and the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504) (N.I.9).

- (g) an exclusion order under section 76 of the Children (Scotland) Act 1995; or
 - (h) a supervision order which imposes a residence requirement under paragraph 5 of Schedule 9 to the Children and Young Persons Act 2001 (an Act of Tynwald) (requirement to live in accommodation provided by the Department of Health and Social Security).
23. A supervision requirement has been imposed at any time with respect to a child so as to remove that child from the person's care, under —
- (a) section 44 of the Social Work (Scotland) Act 1968(40); or
 - (b) section 70 of the Children (Scotland) Act 1995.
24. The person's rights and powers with respect to a child have at any time been vested in a local authority in Scotland —
- (a) under section 16 of the Social Work (Scotland) Act 1968(41); or
 - (b) pursuant to a parental responsibilities order under section 86 of the Children (Scotland) Act 1995.
25. The person —
- (a) has been refused registration in respect of a children's home under section 13 of the Care Standards Act 2000;
 - (b) has had their registration in respect of a children's home cancelled under section 14 or 20(1) of the Care Standards Act 2000; or
 - (c) has been concerned in the management of, or had any financial interest in, a children's home, in respect of which the registration of any person has been cancelled under section 14 or 20(1) of the Care Standards Act 2000.
26. The person has at any time been refused registration in relation to a voluntary home or a children's home, or who carried on, was otherwise concerned with the management of, or had any financial interest in, a voluntary home or a children's home the registration of which was cancelled, under, as the case may be —
- (a) paragraph 1 of Schedule 5 to the Act(42);
 - (b) paragraph 1 or 4 of Schedule 6 to the Act;
 - (c) section 127 of the Children and Young Persons Act (Northern Ireland) 1968(43); or
 - (d) article 80, 82, 96 or 98 of the Children (Northern Ireland) Order 1995.
27. The person has —
- (a) had a prohibition imposed at any time under —
 - (i) section 69 of the Act, section 10 of the Foster Children Act 1980(44) or section 4 of the Children Act 1958(45) (power to prohibit private fostering);
 - (ii) Article 110 of the Children (Northern Ireland) Order 1995 (power to prohibit private fostering);
 - (iii) section 10 of the Foster Children (Scotland) Act 1984 (power to prohibit the keeping of foster children)(46); or

(40) 1968 c. 49. Section 44 was repealed by the Children (Scotland) Act 1995.

(41) Section 16 was repealed by the Children (Scotland) Act 1995

(42) This provision, and those mentioned in the following sub-paragraph are repealed by the Care Standards Act 2000 with effect from 1st April 2002 (S.I. 2001/3852).

(43) This section, and all other sections of the Children and Young Persons Act (Northern Ireland) 1968 referred to below in this Schedule were repealed by the Children (Northern Ireland) Order 1995.

(44) 1980 c. 86. The Foster Children Act was repealed by the Children Act 1989.

(45) 1958 c. 65. Section 4 was repealed by the Foster Children Act 1980.

(46) 1984 c. 56.

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- (iv) section 59 of the Children and Young Persons Act 2001 (an Act of Tynwald) (power to prohibit or impose restrictions upon private fostering); or
 - (b) been given a notice in writing by a Health and Social Services Board under section 1(3) of the Children and Young Persons Act (Northern Ireland) 1968 (withholding consent to the care and maintenance of the child being undertaken by a person).
- 28.** The person has at any time been refused registration in respect of the provision of nurseries or day care, or for child minding, been disqualified from registration or had any such registration cancelled under, as the case may be —
- (a) section 1 or 5 of the Nurseries and Child-Minders Regulation Act 1948⁽⁴⁷⁾;
 - (b) Part X of the Act⁽⁴⁸⁾;
 - (c) Part XA of the Act;
 - (d) (Part XI of the Children (Northern Ireland) Order 1995;
 - (e) section 11(5) or 15 of the Children and Young Persons Act (Northern Ireland) 1968;
 - (f) the Regulation of Care (Scotland) Act 2001⁽⁴⁹⁾; or
 - (g) section 65 or section 66 or section 69 of, or Schedule 7 to, the Children and Young Persons Act 2001 (an Act of Tynwald).
- 29.** The person has at any time been refused registration or had such registration cancelled under section 62 of the Social Work (Scotland) Act 1968 (registration of residential and other establishments).
- 30.** The person has at any time been refused registration as a provider of a child care agency under section 7 of the Regulation of Care (Scotland) Act 2001 or has had such registration cancelled under section 12 of that Act.
- 31.** The person has at any time been included on a list of persons unsuitable to work with children under section 3 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 or has been disqualified from working with children under Part 2 of that Order.

PART III

RELEVANT LISTS

Protection of Children Act List

32. A person who is included in the list of persons kept under section 1 of the Protection of Children Act 1999 (list of those considered by the Secretary of State unsuitable to work with children)⁽⁵⁰⁾.

Education Reform Act list

33. A person who is included on the grounds mentioned in subsection (6ZA)(c) of section 218 of the Education Reform Act 1988⁽⁵¹⁾ in the list kept for the purposes of regulations ⁽⁵²⁾ made under subsection (6) of that section (list of those who are prohibited or restricted from teaching).

⁽⁴⁷⁾ 1948 c. 53. This Act was repealed by the Children Act 1989.

⁽⁴⁸⁾ Part X of the Children Act 1989 was repealed by the Care Standards Act 2000 and replaced with Part XA.

⁽⁴⁹⁾ 2001 asp 8.

⁽⁵⁰⁾ 1999 c. 14.

⁽⁵¹⁾ 1988 c. 40; subsection (6ZA) was inserted by section 5 of the Protection of Children Act 1999 and subsection (6) was amended by that section and by section 290(3) of the Education Act 1993 (c. 35).

⁽⁵²⁾ The current Regulations are the Education (Restriction of Employment) Regulations 2000 (S.I. 2000/2419).

Education Act 1996 list

34. A person who is included on the grounds that he or she is unsuitable to work with children in any list kept by the Secretary of State of persons who are subject to a disqualification imposed under section 470 or 471 of the Education Act 1996⁽⁵³⁾ (disqualification of persons from being proprietors of independent schools or from being teachers or employees in any school).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace, with modifications, the Disqualification from Caring for Children (Wales) Regulations 2002. They make provision for the circumstances in which a person is disqualified from fostering a child privately (regulation 4). In addition they set out the categories of persons who are disqualified from registration in Wales as child minders or providers of day care. Persons disqualified under these Regulations must not provide day care or be concerned in the management of, or have any financial interest in, any provision of day care. Nor must they be employed in connection with the provision of day care. Regulation 6 provides for a waiver of the disqualification in certain circumstances so that where the consent of the National Assembly for Wales, or a local authority prior to 1 April 2002, has been given a person is not to be regarded as disqualified. Regulation 7 imposes an ongoing duty on registered child minders or providers of day care to inform the National Assembly of any subsequent conviction or order which would be a ground for disqualification.

A Regulatory Appraisal has been prepared in connection with these Regulations. A copy may be obtained from the Children and Families Directorate, the National Assembly for Wales, Cathays Park, Cardiff, CF10 3NQ (Tel: 02920 825736).

⁽⁵³⁾ 1996 c. 56.