
STATUTORY INSTRUMENTS

2009 No. 1547

The Childcare (Disqualification) Regulations 2009

Citation and commencement

- 1.—(1) These Regulations may be cited as the Childcare (Disqualification) Regulations 2009.
(2) Subject to paragraph (3), these Regulations shall come into force on 1st September 2009.
(3) Paragraph 4 of Schedule 1 comes into force on 19th October 2009.

Interpretation

- 2.—(1) In these Regulations—
“the Act” means the Childcare Act 2006;
“the 1989 Act” means the Children Act 1989(1);
“the 2000 Act” means the Criminal Justice and Court Services Act 2000(2);
“direction” 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;
“relevant order” and “senior court” have the same meanings as in section 30(1) of the 2000 Act.
- (2) 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 6th April 2007, given a caution(4) in respect of an offence by a police officer after admitting that offence.
- (3) 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.

Revocation

3. The Childcare (Disqualification) Regulations 2007(5) and the Childcare (Disqualification) (Amendment) Regulations 2008(6) are revoked.

(1) 1989 c. 41.

(2) 2000 c. 43.

(3) 2002 c. 32.

(4) Section 75(6) of the Childcare Act 2006 provides that “caution” includes a reprimand or warning within the meaning of section 65 of the Crime and Disorder Act 1998 (c. 37).

(5) S.I. 2007/723.

(6) S.I. 2008/1740.

Care of children and offences against children or adults

4.—(1) Subject to paragraphs (9) and (10) and regulation 10, a person (“P”) is disqualified from registration 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(7).

(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.

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- (c) a direction based wholly or in part on the offence has been revoked.

(10) P shall not be disqualified from registration under paragraph (2) in respect of any refusal or cancellation of registration under the provisions set out in paragraph 19(c) of Schedule 1 if the sole reason for such refusal or cancellation was the failure to pay any fee prescribed under Part 3 of the Act.

Overseas offences

5.—(1) Subject to regulation 10, a person (“P”) is disqualified from registration 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

(7) 2003 c. 42.

- (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 from registration 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

6. A person who is included in the list kept under section 1 of the Protection of Children Act 1999⁽⁸⁾ (list of those considered by the Secretary of State unsuitable to work with children) is disqualified from registration.

Direction in relation to the employment of teachers etc.

- 7.—(1) Subject to regulation 10, a person (“P”) is disqualified from registration 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⁽⁹⁾.

Persons barred from regulated activity relating to children

8. 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 is disqualified from registration.

Persons living or working on premises where a disqualified person lives

9. Subject to regulation 10, 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 from registration.

Waivers

10.—(1) Subject to paragraph (4), where a person (“P”) would be disqualified from registration by virtue of regulation 4, 5, 7(1) and 7(3) or 9 but has disclosed to the Chief Inspector the facts

⁽⁸⁾ 1999 c. 14.

⁽⁹⁾ 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).

which would otherwise cause P to be disqualified, the Chief Inspector may give consent to waive the disqualification for any or all of the following purposes—

- (a) voluntary registration under Chapter 4 of Part 3 of the Act;
- (b) the provision of early years or later years provision to which section 76 of the Act applies;
- (c) direct concern in the management of early years or later years provision to which section 76 of the Act applies;
- (d) employment in connection with the provision of early years or later years provision to which section 76 of the Act applies.

(2) When the Chief Inspector gives consent under paragraph (1), P shall not, in respect of the facts so disclosed, be regarded as disqualified from registration for the purposes specified in the Chief Inspector’s consent.

(3) Any consent given by the Chief Inspector under paragraph (1) shall be in writing and shall specify the extent to which the disqualification from registration is waived.

(4) In relation to a person who would be disqualified from registration by virtue of regulation 4(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.

Appeals

11. Any determination made by the Chief Inspector as to whether to give consent under regulation 10 is a prescribed determination for the purposes of section 74(2) of the Act.

Duty of disclosure

12.—(1) A person who is registered under Chapter 3 or 4 of Part 3 of the Act (“registered person”) must provide the following information to the Chief Inspector—

- (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 certified copy of the relevant order or court order.

(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 Chief Inspector 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) Any allegation that a registered person has failed to meet the requirements prescribed in this regulation may be taken into account by the Chief Inspector in the exercise of the Chief Inspector’s functions under Part 3 of the Act.

(5) Any allegation that a registered person has failed to meet the requirements prescribed in this regulation may be taken into account in any proceedings under Part 3 of the Act.

22nd June 2009

Dawn Primarolo
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