

2007 No. 197

CHILDREN AND YOUNG PERSONS, ENGLAND

**The Day Care and Child Minding (Disqualification) (England)
(Amendment) Regulations 2007**

<i>Made</i>	- - - -	<i>29th January 2007</i>
<i>Laid before Parliament</i>		<i>7th February 2007</i>
<i>Coming into force</i>	- -	<i>28th February 2007</i>

The Secretary of State for Education and Skills makes the following Regulations in exercise of the powers conferred by section 104(4) of, and paragraph 4 of Schedule 9A to, the Children Act 1989(a):

Citation and commencement

1. These Regulations may be cited as the Day Care and Child Minding (Disqualification) (England) (Amendment) Regulations 2007 and come into force on 28th February 2007.

Amendments to the Day Care and Child Minding (Disqualification) (England) Regulations 2005

2. The Day Care and Child Minding (Disqualification) (England) Regulations 2005(b) are amended as follows.

3.—(1) Re-number regulation 3 (interpretation) as paragraph (1) of that regulation.

(2) In regulation 3—

(a) in paragraph (1) as so re-numbered in the definition of “direction” for “subsection (4)(a) or (b)” substitute “subsection (4)(a), (b) or (d)”; and

(b) after paragraph (1) as so re-numbered insert—

“(2) In these regulations—

(a) a person has been “found to have committed” an offence if—

(i) he has been convicted of an offence; or

(ii) on or after 28th February 2007 he has been—

(aa) given a caution(c) in respect of an offence by a police officer after he has admitted that offence;

(a) 1989 c. 41; Schedule 9A was inserted by Schedule 3 to the Care Standards Act 2000 (c. 14). Paragraph 4 of Schedule 9A (disqualification for registration) was amended by paragraph 9 of Schedule 21 to the Education Act 2002 (c. 32), by paragraph 5 of Schedule 4 to the Children Act 2004 (c. 31) and by section 102 of the Childcare Act 2006 (c. 21).

(b) S.I. 2005/2296.

(c) Paragraph 4(6) of Schedule 9A to the Children Act 1989 was substituted by section 102 of the Childcare Act 2006 and provides that “caution” includes a reprimand or warning within the meaning of section 65 of the Crime and Disorder Act 1998 (c. 37).

- (bb) found not guilty of an offence by reason of insanity; or
 - (cc) found to be under a disability and to have done the act charged against him in respect of such an offence; and
- (b) a person has been found to have committed an offence that is “related to” an offence if on or after 28th February 2007 he has been found to have committed an offence of—
- (i) attempting, conspiring or incitement to commit that offence; or
 - (ii) aiding, abetting, counselling or procuring the commission of that offence.”.

4. In regulation 4 (grounds for disqualification relating to the care of children and offences against children)—

- (a) in paragraph (3) for “convicted of” substitute “found to have committed”;
- (b) in paragraph (4)(a)—
 - (i) for “convicted of” substitute “found to have committed”; and
 - (ii) after “Schedule 2” insert “or an offence that is related to such an offence”;
- (c) in paragraph (5) for “convicted of” substitute “found to have committed”;
- (d) in paragraph (6)—
 - (i) for “convicted of” substitute “found to have committed”; and
 - (ii) after “Schedule 3” insert “or an offence that is related to such an offence”; and
- (e) for paragraph (7) substitute the following paragraph—

“(7) A person shall not be disqualified under paragraphs (1) to (6) in respect of any order, determination or offence if—

 - (a) he 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 that offence has been revoked.”.

5. In regulation 5 (offences against adults)—

- (a) in paragraph (1) for “Subject to paragraph (2)” substitute “Subject to paragraphs (2) and (3)”;
- (b) in paragraph (1)(a)—
 - (i) for “convicted of” substitute “found to have committed”; and
 - (ii) for all of the words after “2000 Act” substitute “or an offence that is related to such an offence; or”;
- (c) in paragraph (1)(b) after “2000 Act” insert “or an offence that is related to such an offence”; and
- (d) for paragraph (2) substitute—

“(2) A person shall not be disqualified under paragraph (1) in respect of any order or offence if—

 - (a) he has successfully appealed against the order 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 that offence has been revoked.

(3) A person convicted before 28th February 2007 of any offence, committed against a person aged 18 or over, mentioned in paragraph 2 of Schedule 4 to the 2000 Act—

 - (a) shall not be disqualified this regulation unless a qualifying sentence has been imposed by a senior court in respect of that offence; and

- (b) shall cease to be disqualified where the rehabilitation period applicable to the conviction under the Rehabilitation of Offenders Act 1974^(a) has expired.”.

6. After regulation 5 insert—

“Overseas offences

5A.—(1) Subject to regulation 9, a person is disqualified if on or after 28th February 2007 he 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
- (b) would constitute an offence requiring disqualification under these Regulations if it had been done in any part of the United Kingdom.

(2) In paragraph (1) a person 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) he has been convicted of an offence (whether or not he has been punished for it);
- (b) he 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 he 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 he is under a disability and did the act charged against him.

(3) A person shall not be disqualified 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.”.

7. In regulation 9 (waivers)—

- (a) in paragraphs (1), (3) and (4) for each reference to “4, 5, 7 or 8” substitute “4, 5, 5A, 7 or 8”; and
- (b) in paragraph (6) for “or 29(4)” substitute “, 29(4) or 29A(2)”.

8. In Schedule 2 (repealed statutory offences)—

- (a) in paragraphs 2(a) to (q) for each reference to “convicted of” substitute “found to have committed”; and
- (b) after paragraph 2(q) insert—
 - “(r) he has been found to have committed an offence related to an offence specified in paragraphs (a) to (q).”.

Beverley Hughes
Minister of State

29th January 2007

Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Day Care and Child Minding (Disqualification) (England) Regulations 2005 (S.I. 2005/2296) (the “2005 Regulations”).

The definition of “direction” in the 2005 Regulations is amended so as to include directions made by the Secretary of State under the grounds set out in section 142(4)(d) of the Education Act 2002

(a) 1974 c. 53.

(c. 32) (regulation 3(2)(a) of these Regulations). Paragraph (d) of section 142(4) allows the Secretary of State to direct that a person be prohibited from providing education and carrying out work with regular contact with children in certain educational institutions on the grounds of his health.

Amendments to regulation 4 of, and Schedule 2 to, the 2005 Regulations expand the circumstances in which a person may be disqualified from registration based on those offences he has been “found to have committed” (see regulations 4 and 8(a) of these Regulations). “Found to have committed” is defined in the new regulation 3(2)(a) inserted by regulation 3(2)(b) of these Regulations. The circumstances now include where a person has been cautioned for an offence (which includes reprimands and warnings issued by the police under section 65 of the Crime and Disorder Act 1998 (c. 37)); where a finding of not guilty by way of insanity is made by a court; and where a court finds that an act has been committed but decides that the defendant was acting under a disability at the time. Disqualification from registration will apply to these expanded circumstances only where they occur after these Regulations come into force.

Amendments to regulation 4 of, and Schedule 2 to, the 2005 Regulations also expand the offences for which a person may be disqualified from registration to include attempts; conspiracy or incitement; or aiding, abetting, counselling or procuring the commission of the offences specified in regulation 4 of the 2005 Regulations (see regulations 4 and 8(b) of these Regulations). “Related to” is defined in the new regulation 3(2)(b) inserted by regulation 3(2)(b) of these Regulations. Such offences are applicable only after these Regulations come into force.

Regulation 5 of the 2005 Regulations applies to offences committed against adults for which a person may be disqualified from registration. That regulation is amended (by regulation 5 of these Regulations) to remove with prospective effect the requirement that such an offence must receive a “qualifying sentence” before leading to disqualification. A qualifying sentence is defined in the Criminal Justice and Courts Services Act 2000 (c. 43) (the “2000 Act”) as one involving detention for 12 months or more or at Her Majesty’s pleasure or involving a hospital order under the Mental Health Act 1983 (c. 20) or guardianship order. Regulation 5 of the 2005 Regulations is also amended to remove with prospective effect the exemption from disqualification in respect of any conviction which has become spent under the Rehabilitation of Offenders Act 1974 (c. 53).

The expanded circumstances for disqualification from registration (cautions, reprimands etc) are included in regulation 5 of the 2005 Regulations by regulation 5 of these Regulations, as are the expanded offences of attempt, conspiracy, aiding and abetting etc.

Offences committed while overseas which involve acts which, if they had been done within the United Kingdom, would lead to an offence requiring disqualification under the 2005 Regulations will lead to disqualification under a new regulation 5A of the 2005 Regulations (see regulation 6).

Regulation 7 makes an amendment to the provisions of the 2005 Regulations which are concerned with waivers of disqualification. Regulation 9(6) of the 2005 Regulations sets out circumstances in which waivers may not be granted and these circumstances are amended to include situations where a court has made a disqualification order under section 29A(2) of the 2000 Act in relation to an offence.

£3.00

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E0097 2/2007 170097T 19585

