
WELSH STATUTORY INSTRUMENTS

2002 No. 896 (W.102)

CHILDREN AND YOUNG PERSONS, WALES

**The Disqualification from Caring for
Children (Wales) Regulations 2002**

Made - - - - 26th March 2002

Coming into force - - 1 April 2002

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 68(1) and (2) and 104(4) of and paragraph 4 of Schedule 9A to the Children Act 1989⁽¹⁾ hereby makes the following Regulations:

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Disqualification from Caring for Children (Wales) Regulations 2002 and shall come into force on 1st April 2002.

(2) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Children Act 1989;

“the 2000 Act” (“*Deddf 2000*”) means the Care Standards Act 2000⁽²⁾;

“the Schedule” (“*yr Atodlen*”) means the Schedule to these Regulations.

(3) These Regulations apply in relation to Wales.

Disqualification from fostering a child privately

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

(a) the person has been convicted of any offence specified in Part I of the Schedule; or

(b) the person is a relevant person mentioned in Part II of the Schedule.

(1) 1989 c. 41. The functions under section 68 are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999, S.I.1999/672. Schedule 9A was inserted into the Children Act 1989 by section 79(2) of and Schedule 3 to the Care Standards Act 2000 (c. 14). 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.

(2) 2000 c. 14.

Disqualification for registration for child minding and providing day care

3.—(1) For the purpose of paragraph 4 of Schedule 9A to the Act (disqualification for registration) a person is, subject to regulation 4, disqualified for registration under Part XA of the Act for child minding or providing day care if—

- (a) the person has been convicted of any offence mentioned in Part I of the Schedule; or
 - (b) the person is a relevant person mentioned in Parts II or III of the Schedule; or
 - (c) the person has at any time been disqualified from fostering a child privately.
- (2) Subject to regulation 4, a person who lives—
- (a) in the same household as a person who is disqualified under paragraph (1); or
 - (b) in a household at which any such person is employed,

is disqualified for registration under Part XA of the Act for child minding or providing day care.

Local authority waivers

4. A person shall not be regarded as disqualified under regulation 3 if, prior to the coming into force of these Regulations, the person—

- (a) disclosed facts to an appropriate local authority under paragraph 2 of Schedule 9 to the Act which would disqualify the person under regulation 3; and
- (b) obtained the written consent of that local authority.

Revocation

5. The Disqualification for Caring for Children Regulations 1991⁽³⁾ are revoked in so far as they apply to Wales.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽⁴⁾.

26th March 2002

Rhodri Morgan
The First Minister of the National Assembly for
Wales

⁽³⁾ S.I. 1991/2094 as amended by S.I. 1997/2308. The Regulations are revoked in relation to England by S.I. 2002/635.

⁽⁴⁾ 1998 c. 38.

SCHEDULE

Regulations 2 and 3

PART I

Offences in England and Wales

1. Murder.
2. Manslaughter.
3. Kidnapping.
4. False imprisonment.
5. An offence under section 16 of the Offences against the Person Act 1861 (threats to kill)(5).
6. An offence under section 18, 20 or 47 of that Act (wounding and causing bodily harm).
7. An offence under section 1 of the Children and Young Persons Act 1933 (cruelty to children)(6).
8. An offence under section 1 of the Infanticide Act 1938 (infanticide)(7).
9. An offence under section 1 of the Sexual Offences Act 1956 (rape)(8).
10. An offence under section 2 or 3 of that Act (procurement of woman by threats or false pretences).
11. An offence under section 4 of that Act (administering drugs to obtain or facilitate intercourse).
12. An offence under section 5 of that Act (intercourse with a girl under 13).
13. An offence under section 6 of that Act (intercourse with a girl under 16).
14. An offence under section 7 of that Act (intercourse with defective)(9).
15. An offence under section 9 of that Act (procurement of defective).
16. An offence under section 10 of that Act (incest by a man).
17. An offence under section 11 of that Act (incest by a woman).
18. An offence under section 12 of that Act by committing buggery with a child under the age of 16.
19. An offence under section 13 of that Act by committing an act of gross indecency with a child.
20. An offence under section 14 or 15 of that Act (indecent assault).
21. An offence under section 16 of that Act (assault with intent to commit buggery).
22. An offence under section 17 of that Act (abduction of woman by force or for the sake of her property).
23. An offence under section 19 or 20 of that Act (abduction of girl under 18 or 16).
24. An offence under section 21 of that Act (abduction of defective from parent or guardian) by taking a child out of the possession of the child's parent or guardian.

(5) 1861 c. 100. Section 16 was substituted by the Criminal Law Act 1977 (c. 45).

(6) 1933 c. 12.

(7) 1938 c. 36.

(8) 1956 c. 69. Section 1 was substituted by the Criminal Justice and Public Order Act 1994 (c. 33).

(9) Section 7 was substituted by the Mental Health Act 1959 (c. 72).

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25. An offence under section 22 of that Act (causing prostitution of women).
26. An offence under section 23 of that Act (procurement of girl under 21).
27. An offence under section 24 of that Act (detention of woman in brothel or other premises).
28. An offence under section 25 or 26 of that Act (permitting girl under 13, or between 13 and 16, to use premises for intercourse).
29. An offence under section 27 of that Act (permitting defective to use premises for intercourse).
30. An offence under section 28 of that Act (causing or encouraging prostitution of, intercourse with or indecent assault on, girl under 16).
31. An offence under section 29 of that Act (causing or encouraging prostitution of defective).
32. An offence under section 30 of that Act (man living on earnings of prostitution).
33. An offence under section 31 of that Act (woman exercising control over prostitute).
34. An offence under section 128 of the Mental Health Act 1959 (sexual intercourse with patients)(10).
35. An offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child)(11).
36. An offence under section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts)(12) by—
 - (a) procuring a child to commit an act of buggery with any person, or
 - (b) procuring any person to commit an act of buggery with a child.
37. An offence under section 5 of that Act (living on earnings of male prostitution).
38. An offence under section 9(1)(a) of the Theft Act 1968 (burglary)(13) by entering a building or part of a building with intent to rape a child.
39. An offence under section 4(3) of the Misuse of Drugs Act 1971(14).
40. An offence under section 54 of the Criminal Law Act 1977 (inciting girl under sixteen to incest)(15).
41. An offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children)(16).
42. An offence under section 170 of the Customs and Excise Management Act 1979(17) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions relating to pornography)(18) where the prohibited goods included indecent photographs of children under the age of 16.
43. An offence under section 1 of the Child Abduction Act 1984 (abduction of child by parent)(19) or section 32(3) of the Children and Young Persons Act 1969 (incitement etc. of absentees)(20).

(10) 1959 c. 72.

(11) 1960 c. 33.

(12) 1967 c. 60. Section 4(2) was repealed by the Criminal Law Act 1977.

(13) 1968 c. 60.

(14) 1971 c. 38.

(15) 1977 c. 45.

(16) 1978 c. 37.

(17) 1979 c. 2.

(18) 1876 c. 36.

(19) 1984 c. 37.

(20) 1969 c. 54.

44. An offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of child)(21).

45. An offence under section 14 of the Children Act 1958(22), section 16 of the Foster Children Act 1980(23) or section 70 of the Act (offences relating to private fostering).

46. An offence under section 44(15), 49 or 50(9) of the Act (offences of obstruction and relating to the abduction of a child in care).

47. An offence under section 63(10) of, paragraph 1(5) of Schedule 5 to, or paragraph 2(3) of Schedule 6 to, the Act (offences relating to voluntary homes and children's homes)(24).

48. An offence under section 78, 79D or 79F(6) of the Act (offences relating to child minding and daycare)(25).

49. An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of trust)(26).

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

- (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).

51. An offence of—

- (a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in paragraphs 1 to 50 of this Schedule; or
- (b) conspiring or attempting to commit such an offence.

Offences in Scotland

52. An offence of rape.

53. Murder.

54. Culpable homicide.

55. 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)(27).

56. An offence under section 32(3) of the Children and Young Persons Act 1969 (inciting etc. of absentee).

57. An offence specified in Schedule 1 to the Criminal Procedure (Scotland) Act 1995(28).

58. The common law offence in Scotland of plagium (theft of a child below the age of puberty).

(21) 1988 c. 33.

(22) 1958 c. 65.

(23) 1980 c. 86.

(24) Provision for the repeal of these provisions is contained in the Care Standards Act 2000.

(25) Sections 79D and 79F are inserted into the 1989 Act by the Care Standards Act 2000.

(26) 2000 c. 44.

(27) 1968 c. 49.

(28) 1995 c. 46.

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

60. An offence under Section 52 or 52A of the Civic Government (Scotland) Act 1982 (offences relating to indecent photographs of children)(**29**).

61. An offence under section 6 of the Child Abduction Act 1984 (taking or sending child out of the United Kingdom).

62. An offence under section 15 of the Foster Children (Scotland) Act 1984 (offences relating to private fostering)(**30**).

63. An offence under section 78 of the Act (offences relating to child minding and day care).

64. An offence under section 81, 83 or 89 of the Children (Scotland) Act 1995(**31**) or section 17(8) or 71 of the Social Work (Scotland) Act 1968(**32**) (harbouring offences).

65. An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of trust).

66. 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(**33**)—

- (a) section 21 (offences in relation to registration);
- (b) section 22 (false statements in applications); or
- (c) section 29(10) (offences in regulations).

Offences in Northern Ireland

67. An offence of rape.

68. An offence specified in Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968(**34**).

69. An offence under section 32(3) of the Children and Young Persons Act 1969 (inciting etc. of absentee).

70. An offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs)(**35**).

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

72. An offence contrary to Article 9 of the Criminal Justice (Northern Ireland) Order 1980 (inciting girl under 16 to have incestuous sexual intercourse)(**36**).

(29) 1982 c. 45. Section 52A was inserted by section 161 of the Criminal Justice Act 1988 (c. 33).

(30) 1984 c. 56.

(31) 1995 c. 36.

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

(33) 2001 asp 8.

(34) 1968 c. 34 (N.I.). Schedule 1 was amended by the Criminal Justice (Northern Ireland) Order 1980; the Child Abduction (Northern Ireland) Order 1985; the Mental Health (Northern Ireland) Order 1986. Reference in the Protection of Children (Northern Ireland) Order 1978 to offences under Schedule 1 include an offence under the Protection of Children (Northern Ireland) Order 1978.

(35) S.I. 1978/1047 (N.I.17).

(36) S.I. 1980/1704 (N.I.6).

73. An offence under Article 15 of the Criminal Justice (Evidence etc.) (Northern Ireland) Order 1988 (possession of indecent photographs of children)(37).

74. An offence under Article 63(15), 68 or 69(9) of the Children (Northern Ireland) Order 1995 (offences of obstruction and relating to the abduction of a child in care)(38).

75. An offence under section 32(3), 140(6) or 144(3) of the Children and Young Persons Act (Northern Ireland) 1968.

76. An offence under Article 132 of the Children (Northern Ireland) Order 1995 or section 14 of the Children and Young Persons Act (Northern Ireland) Order 1968 (offences relating to child minding and day care)(39).

77. An offence under 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).

78. An offence under 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).

79. An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of trust).

Other offences

80. Any offence, other than the offences mentioned in paragraphs 1 to 79, involving injury or threat of injury to another person.

81. An offence by virtue of—

- (a) section 7 of the Sex Offenders Act 1997 (extension of jurisdiction: England and Wales and Northern Ireland)(40); or
- (b) section 16B of the Criminal Law (Consolidation)(Scotland) Act 1995 (commission of certain sexual offences outside the United Kingdom)(41).

PART II

1. The relevant person is a parent of a child who at any time has been made the subject of an order under—

- (a) section 31(1) of the Act (care and supervision orders); or
- (b) article 50(1) of the Children (Northern Ireland) Order 1995 (care and supervision orders).

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

- (a) an order under section 31(1)(a) of the Act or an order under section 1(3)(c) or 7(7)(a) of the Children and Young Persons Act 1969 (care orders)(42);

(37) S.I. 1988/1847 (N.I.17).

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

(39) This section of the Children and Young Persons Act (Northern Ireland) 1968 and those mentioned in the following subparagraphs were repealed by the Children (Northern Ireland) Order 1995.

(40) 1997 c. 51.

(41) 1995 c. 39. Section 16B was inserted by section 8 of the Sex Offenders Act 1997.

(42) Section 1(3) of the Act was repealed by the Children Act 1989. Section 7(7)(a) of the Children and Young Persons Act 1969 was repealed by the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).

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- (b) any other 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⁽⁴³⁾;
 - (c) a supervision order which imposed a residence requirement under paragraph 5 of Schedule 6 to the Powers of Criminal Courts (Sentencing) Act 2000⁽⁴⁴⁾ or section 12AA of the Children and Young Persons Act 1969⁽⁴⁵⁾ (requirement to live in local authority accommodation);
 - (d) an order under article 50(1)(a) of the Children (Northern Ireland) Order 1995; or
 - (e) a fit person order, parental rights order or a training school order under the Children and Young Persons Act (Northern Ireland) 1968⁽⁴⁶⁾.
3. A supervision requirement has been imposed under—
- (a) section 44 of the Social Work (Scotland) Act 1968⁽⁴⁷⁾; or
 - (b) section 70 of the Children (Scotland) Act 1995
- at any time with respect to any child for the purpose of removing that child from the relevant person’s care.
4. The relevant person’s rights and powers with respect to the child have at any time been vested in a local authority in Scotland—
- (a) under section 16 of the Social Work (Scotland) Act 1968⁽⁴⁸⁾; or
 - (b) pursuant to a parental responsibilities order under section 86 of the Children (Scotland) Act 1995.
5. The relevant person has at any time been refused registration in relation to a voluntary home or a children’s home, or 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⁽⁴⁹⁾;
 - (b) paragraph 1 or 4 of Schedule 6 to the Act;
 - (c) section 127 of the Children and Young Persons Act (Northern Ireland) 1968⁽⁵⁰⁾; or
 - (d) Article 80, 82, 96 or 98 of the Children (Northern Ireland) Order 1995.
6. A prohibition has been imposed in respect of the relevant person under—
- (a) section 69 of the Act, section 10 of the Foster Children Act 1980⁽⁵¹⁾ or section 4 of the Children Act 1958 (power to prohibit private fostering)⁽⁵²⁾;
 - (b) Article 110 of the Children (Northern Ireland) Order 1995 (power to prohibit private fostering); or
 - (c) section 10 of the Foster Children (Scotland) Act 1984 (power to prohibit the keeping of foster children).

⁽⁴³⁾ Part IV of the Act came into force on 14 October 1991.

⁽⁴⁴⁾ 2000 c. 6.

⁽⁴⁵⁾ Section 12AA was repealed by the Powers of Criminal Courts (Sentencing) Act 2000.

⁽⁴⁶⁾ 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.

⁽⁴⁷⁾ Section 44 was repealed by the Children (Scotland) Act 1995.

⁽⁴⁸⁾ Section 16 was repealed by the Children (Scotland) Act 1995.

⁽⁴⁹⁾ This provision and those mentioned in the following sub-paragraph are repealed by the Care Standards Act 2000.

⁽⁵⁰⁾ Section 127 was repealed by the Children (Northern Ireland) Order 1995.

⁽⁵¹⁾ The Foster Children Act 1980 was repealed by the Children Act 1989.

⁽⁵²⁾ Part I of the Children Act 1958 was repealed by the Foster Children Act 1980.

7. The relevant person is a person in respect of whom a notice in writing has been given 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)(**53**);

8. The relevant person has at any time been refused registration in respect of the provision of nurseries or day care or for child minding 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(**54**);
- (b) Part X or XA of the Act(**55**);
- (c) Part XI of the Children (Northern Ireland) Order 1995; or
- (d) section 11(5) or 15 of the Children and Young Persons Act (Northern Ireland) 1968(**56**).

9. The relevant person has at any time been refused registration or had such registration cancelled—

- (a) under section 62 of the Social Work (Scotland) Act 1968 (registration of residential and other establishments)(**57**); or
- (b) in respect of a care home service, child minding or day care of children, under Part I of the Regulation of Care (Scotland) Act 2001.

10. The relevant person has at any time been made the subject of an admission order, a guardianship order, a supervision and treatment order or an order for his or her absolute discharge in accordance with section 5 of the Criminal Procedure (Insanity) Act 1964(**58**) or section 6, 14 or 14A of the Criminal Appeal Act 1968(**59**), as the case may be.

PART III

1. The relevant person 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)(**60**).

2. The relevant person is included, on the grounds mentioned in subsection (6ZA)(c) of section 218 of the Education Reform Act 1988(**61**) in the list kept for the purposes of regulations made under subsection (6) of that section (list of those who are prohibited or restricted from teaching).

3. The relevant person is included on the grounds of unsuitability to work with children in any list kept by the Secretary of State of persons who are subject to a disqualification imposed under

(53) Section 1(3) was amended by Schedule 16 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265) (N.I. 14) and was repealed by the Children (Northern Ireland) Order 1995.

(54) 1948 c. 53. Section 1 was amended by section 60 of the Health Services and Public Health Act 1968 (c. 46) and was repealed by the Children Act 1989.

(55) Part X of the Children Act 1989 ceased to extend to Wales subject to transitional, transitory and savings provision in the Schedule to the Care Standards Act 2000 (Commencement No. 8 (Wales) and Transitional, Savings and Consequential Provisions) Order 2002 (S.I. 2002/920).

(56) These sections were repealed by the Children (Northern Ireland) Order 1995.

(57) Section 62 was amended by section 3 of the Registered Establishments (Scotland) Act 1987 (c. 40).

(58) 1964 c. 84. Section 5 was substituted by section 3 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25).

(59) 1968 c. 69. Sections 6 and 14 were substituted and section 14A was inserted by section 4 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991.

(60) 1999 c. 14.

(61) 1998 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); the current regulations made under subsection (6) are the Education (Restriction of Employment) Regulations 2000 (S.I. 2000/2419).

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section 470 or 471 of the Education Act 1996(62) (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 for Caring for Children Regulations 1991, in so far as they apply in Wales. They come into force on 1st April 2002.

The Regulations make provision for the circumstances in which a person is disqualified from fostering a child privately (regulation 2). By virtue of section 65 of the Children Act 1989, as amended by the Care Standards Act 2000, a person who is disqualified from fostering a child privately is also disqualified from carrying on or being concerned in the management of, or having any financial interest in, a children's home, and may not be employed in a children's home, without the consent of the National Assembly.

The Regulations make provision for the circumstances in which a person is disqualified for registration for child minding or providing day care (regulation 3). They also provide for the disqualification for registration for child minding or providing day care of persons who live in the same household as someone who is disqualified for such registration or in a household at which such a disqualified person is employed.

Regulation 4 provides for cases where consent has been given prior to the coming into force of the Regulations to persons by a local authority which has the effect of permitting them to act in circumstances in which they would otherwise have been disqualified. In such cases the persons concerned will not be regarded as disqualified as a result of those circumstances under these Regulations.