
WELSH STATUTORY INSTRUMENTS

2007 No. 947 (W.81)

EDUCATION, WALES

The Independent Schools (Miscellaneous Amendments) (Wales) Regulations 2007

Made - - - - - 20 March 2007

Coming into force - - - - - 29 March 2007

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 157(1), 160(1), 168 and 210(7)(1) of the Education Act 2002 hereby makes the following Order:

Title and commencement

1. The title of these Regulations is the Independent Schools (Miscellaneous Amendments) (Wales) Regulations 2007 and they come in force on 29 March 2007.

Amendment of the Independent Schools (Provision of Information) (Wales) Regulations 2003

2.—(1) The Independent Schools (Provision of Information) (Wales) Regulations 2003(2) are amended as follows.

(2) In regulation 2(1), the following are inserted at the appropriate alphabetical places —

““appropriate criminal record certificate”, in relation to a person employed at a school, means —

- (i) where the person holds at the school a position mentioned in regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002(3), an enhanced criminal record certificate issued under section 113B of the Police Act 1997(4); or
- (ii) where the person does not hold such a position, a criminal record certificate issued under section 113A of the Police Act 1997(5);

(1) 2002 c. 32. For the definitions of “prescribed” and “regulations”, see section 212(1) of the Education Act 2002.
(2) S.I.2003/3230 (W. 310).
(3) S.I. 2002/233. Regulation 5A was inserted by S.I. 2006/748 and has been amended by S.I. 2006/2181.
(4) 1997 c. 50. Section 113B was inserted by the Serious Organised Crime and Police Act 2005 (c. 15).
(5) Section 113A was inserted by the Serious Organised Crime and Police Act 2005.

provided that, in both cases, where the person holds a position mentioned in section 113C(5) of the Police Act 1997⁽⁶⁾, the certificate also contains the information specified in section 113C(1) of that Act⁷; and

““looked after by a local authority” has the meaning assigned to it by section 22(1) of the Children Act 1989”.

(3) In regulation 3(d), the following is inserted after the word “proprietor” —
“or by a person authorised by the proprietor to give the certificate on the proprietor’s behalf”.

(4) At the end of paragraph 2(2)(b) of the Schedule, the following is inserted —
“and (subject to sub-paragraph (5) below) for each member of the corporation, firm or body, his or her full name, any previous names by which he or she has been known, his or her usual residential address and date of birth.”

(5) At the end of paragraph 2 of the Schedule, the following sub-paragraph is inserted —

“(5) For the purposes of this paragraph, where the proprietor is a corporation which is a company limited by shares (within the meaning of the Companies Act 1985), a person is not to be treated as a member of the corporation unless he or she holds at least 5% of the company’s share capital.”

(6) After paragraph 5 of the Schedule, the following paragraph is inserted —

“**5A.** The number of pupils at the school who are looked after by a local authority.”

(7) For paragraph 7(d) of the Schedule, there is substituted —
“where the person is a person in respect of whom the Secretary of State must issue a criminal record certificate under section 113A of the Police Act 1997 in response to a duly made application for such a certificate, confirmation that an appropriate criminal record certificate in respect of the person is available to the proprietor.”

(8) At the end of paragraph 10(c) of the Schedule, there is inserted —
“(except that no information as regards qualifications is required in the case of a teacher who has ceased employment)”.

(9) For paragraph 10(d) of the Schedule, there is substituted —
“in the case of a person who has commenced employment, where he or she is a person in respect of whom the Secretary of State must issue a criminal record certificate under section 113A of the Police Act 1997 in response to a duly made application for such a certificate, confirmation that paragraph 4(bb) of the Schedule to the Independent School Standards (Wales) Regulations 2003 (criminal record certificate to be made available prior to appointment) was complied with prior to the person’s appointment.”

(10) After paragraph 13 of the Schedule, the following paragraph is inserted —

“**14.** Where a change has occurred in the membership of any corporation, Scottish firm or body of persons named as the proprietor in the register, in respect of any new member who is treated as a member for the purposes of paragraph 2 of this Schedule, the information specified in sub-paragraph (2) of that paragraph.”

Amendment of the Independent School Standards (Wales) Regulations 2003

3.—(1) The Independent School Standards (Wales) Regulations 2003⁽⁷⁾ are amended as follows.

(2) In regulation 2, at the appropriate alphabetical places, there are inserted the following —

⁽⁶⁾ Section 113C was inserted by the Serious Organised Crime and Police Act 2005.

⁽⁷⁾ S.I. 2003/3234 (W. 314), amended by S.I. 2005/2929.

““appropriate criminal record certificate”, in relation to a person employed at a school, means —

- (i) where the person holds at the school a position mentioned in regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, an enhanced criminal record certificate issued under section 113B of the Police Act 1997; or
- (ii) where the person does not hold such a position, a criminal record certificate issued under section 113A of the Police Act 1997;

provided that, in both cases, where the person holds a position mentioned in section 113C(5) of the Police Act 1997, the certificate also contains the information specified in section 113C(1) of that Act”; and

““responsible individual” means—

- (i) the individual with overall control of the day to day management of the school; or
- (ii) where that control is shared between two or more individuals, the one of them nominated by the proprietor to be the responsible individual.”

(3) In paragraph 3(6) of the Schedule, after “satisfactory” there is inserted “written”.

(4) For sub-paragraphs (a) and (b) of paragraph 4 of the Schedule, there is substituted —

“(a) in the case of a proprietor who is an individual, the proprietor has applied for an appropriate criminal record certificate and that application has been countersigned by the National Assembly for the purposes of Part V of the Police Act 1997;

(aa) in the case of a proprietor which is a corporation, Scottish firm or body of persons, the responsible individual has applied for an appropriate criminal record certificate and that application has been countersigned by the National Assembly for the purposes of Part V of the Police Act 1997;

(b) in the case of a proprietor which is a corporation, Scottish firm or body of persons, the proprietor ensures that there is available in respect of each member of the corporation, firm or body an appropriate criminal record certificate, if both the following conditions apply:

- (i) the member is treated as a member for the purposes of paragraph 2 of the Schedule to the Independent Schools (Provision of Information) (Wales) Regulations 2003 (members holding less than 5% of a company’s share capital to be disregarded); and
- (ii) the member is an individual in respect of whom the Secretary of State must issue a criminal record certificate under section 113A of the Police Act 1997 in response to a duly made application for such a certificate;

(bb) prior to the appointment of any member of staff to work at the school, where the prospective member of staff is an individual in respect of whom the Secretary of State must issue a criminal record certificate under section 113A of the Police Act 1997, the proprietor ensures that —

- (i) the individual has applied for an appropriate criminal record certificate; and
- (ii) the individual makes the certificate available to the proprietor;”.

(5) At the end of paragraph 4 of the Schedule, the following sub-paragraph is inserted —

“(f) any foreign national working at or for the purposes of the school is subject to the checks set out in National Assembly for Wales guidance “Child Protection: Preventing Unsuitable People from Working with Children and Young Persons in the Education Service” (circular 34/02)”.

(6) In paragraph 6 of the Schedule —

(i) in sub-paragraph (3)(a), after “summary report”, there is inserted “prepared by that body”; and

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

(ii) at the end of sub-paragraph (5), there is inserted “except that no report need be sent to a parent who has agreed otherwise with the school”.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(8)

20 March 2007

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make a number of amendments to the Independent Schools (Provision of Information) (Wales) Regulations 2003 (“the information regulations”) and the Independent School Standards (Wales) Regulations 2003 (“the standards regulations”).

The information regulations are amended so as to clarify the requirements imposed upon the proprietors of independent schools as to the carrying out of criminal records, and related, checks with the Criminal Records Bureau as regards persons working at an independent school. The amendments also require additional information to be provided about the members of a corporate body which is the proprietor of an independent school, and the numbers of looked after children being educated at such a school.

The standards regulations are also amended so as to clarify requirements in relation to criminal records checks and to specify those criminal records certificates that must be copied to the Assembly, as registration authority for independent schools in Wales.