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WELSH STATUTORY INSTRUMENTS

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**2009 No. 2541**

The Children Act 1989, Care Standards Act  
2000 and Adoption and Children Act 2002  
(Miscellaneous Amendments) (Wales) Regulations 2009

**PART 4**

Establishments and agencies, services and facilities — adult social care and health

**Amendment to the Adult Placement Schemes (Wales) Regulations 2004**

**10.**—(1) The Adult Placement Schemes (Wales) Regulations 2004<sup>(1)</sup> are amended as follows.

(2) For paragraph 2 of Schedule 3 (information and documents to be available in respect of adult placement carers, persons providing care services for the purposes of an adult placement, persons providing and managing adult placement schemes) substitute—

“2. Either—

- (a) where the certificate is required for a purpose related to registration under Part 2 of the Act or the position falls within 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 which includes suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act); or
- (b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.”

**Amendments to the Care Homes (Wales) Regulations 2002**

**11.**—(1) The Care Homes (Wales) Regulations 2002<sup>(2)</sup> are amended as follows.

(2) In regulation 7 (fitness of registered provider)—

(a) for paragraph (3) (c) (ii) substitute—

“(ii) where paragraph (4) applies, in respect of each matter specified in paragraph 1 and 3 to 6 of Schedule 2;” ;

(b) for paragraph (3) (c) (iii) substitute—

“(iii) and further, where paragraph (4) applies, notification has been received under section 113E (4) (a) of the Police Act 1997 that the individual is not included on a specified adults' list (within the meaning of section 113E of that Act).” ;

(c) for paragraph (4) substitute—

“(4) This paragraph applies—

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(1) S.I.2004/1756 (W.188).

(2) S.I. 2002/324 (W.37). Relevant amending instruments are S.I. 2002/2622 (W.254) and 2004/2414 (W.222).

- (a) where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued; and
  - (b) the individual will not be engaged in regulated activity relating to children.”.
- (3) In regulation 9 (fitness of registered manager)—
  - (a) for paragraph (2) (c) (ii) substitute—
    - “(ii) where paragraph (3) applies, in respect of each matter specified in paragraphs 1 and 3 to 6 of Schedule 2;”;
  - (b) for paragraph (2) (c) (iii) substitute—
    - “(iii) and further, where paragraph (3) applies, notification has been received under section 113E(4)(a) of the Police Act 1997 that the individual is not included on a specified adults' list (within the meaning of section 113E of that Act).”;
  - (c) for paragraph (3) substitute—
    - “(3) This paragraph applies—
      - (a) where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued; and
      - (b) the individual will not be engaged in regulated activity relating to children.”.
- (4) In regulation 19 (fitness of workers)—
  - (a) for paragraph (2) (d) (ii) substitute—
    - “(ii) where paragraph (3) applies, the matters specified in paragraphs 1 and 3 to 6 of that Schedule;”;
  - (b) after paragraph (2) (d) (ii) insert—
    - “(iii) and further, where paragraph (3) applies, notification has been received under section 113E (4) (a) of the Police Act 1997 that the individual is not included on a specified adults' list (within the meaning of section 113E of that Act).”;
  - (c) for paragraph (3) substitute—
    - “(3) This paragraph applies—
      - (i) where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued; and
      - (ii) the individual will not be engaging in regulated activity relating to children.”;
  - (d) for paragraph (5) (b)(iii) substitute—
    - “(iii) where paragraph (3) applies, notification has been received under section 113E (4) (a) of the Police Act 1997 that the individual is not included on a specified adults' list (within the meaning of section 113E of that Act).”;
  - (e) after paragraph (5A) (b) insert—
    - “(ba) notification has been received under section 113E (4) (a) of the Police Act 1997 that the individual is not included on a specified adults' list (within the meaning of section 113E of that Act).”;
  - (f) omit sub paragraph (6) .
- (5) For paragraph (5) of Regulation 43 (death of registered person) substitute—
  - “(5) The personal representatives shall appoint a person to manage the care home during any period in which, in accordance with paragraph (3), they carry on the care home without being registered in respect of it.”.

(6) In Schedule 2 (information and documents to be available in respect of persons carrying on, managing or working at care homes)—

(a) for paragraph 2 substitute—

“2. Either—

- (a) where the certificate is required for a purpose related to registration under Part 2 of the Act or the position falls within 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 which includes suitability information relating to vulnerable adults (within the meaning of section 113BB (2) of that Act) and, where applicable, suitability information relating to children (within the meaning of section 113BA (2) of that Act); or
- (b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.”;

(b) omit paragraphs 7 and 8 .

#### **Amendments to the Domiciliary Care Agencies (Wales) Regulations 2004**

**12.**—(1) The Domiciliary Care Agencies (Wales) Regulations 2004(3) are amended as follows.

(2) In Schedule 2 (information required in respect of registered providers and managers of an agency and persons nominated to deputise for a registered person)

(a) for paragraph 3 substitute—

“3. Either—

- (a) where the certificate is required for a purpose related to registration under Part 2 of the Act or the position falls within 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 which includes suitability information relating to vulnerable adults (within the meaning of section 113BB (2) of that Act) and, where applicable, suitability information relating to children (within the meaning of section 113BA (2) of that Act); or
- (b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.” ;

(b) omit paragraph 11.

(3) In Schedule 3 (information and documentation to be available in respect of domiciliary care workers) —

(a) for paragraph 4 substitute—

“4. Either —

- (a) where the certificate is required for a purpose related to registration under Part 2 of the Act or the position falls within 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 which includes suitability information relating to vulnerable adults (within the meaning of section 113BB (2) of that Act) and, where applicable, suitability information relating to children (within the meaning of section 113BA(2) of that Act); or
- (b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.” ;

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(3) S.I. 2004/219 (W.23). Relevant amending instrument is S.I. 2004/2414 (W.222).

- (b) omit paragraph 13.

### **Amendments to the Nurses Agencies (Wales) Regulations 2003**

- 13.**—(1) The Nurses Agencies (Wales) Regulations 2003(4) are amended as follows.
- (2) In regulation 7 (fitness of registered provider)—
- (a) for paragraph (3) (c) (ii) substitute—
- “(ii) where paragraph (4) applies, in respect of each matter specified in paragraphs 1 and 3 to 8 of Schedule 2;”;
- (b) after paragraph (3) (c) (ii) insert—
- “(iii) and further, where paragraph (4) applies, notification has been received under section 113E (4) (a) of the Police Act 1997 that the individual is not included on a specified adults' list (within the meaning of section 113E of that Act).”;
- (c) for paragraph (4) substitute—
- “(4) This paragraph applies—
- (a) where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued; and
- (b) the individual will not be engaging in regulated activity relating to children.”.
- (3) In regulation 9 (fitness of manager)—
- (a) for paragraph (2) (c) (ii) substitute—
- “(ii) where paragraph (3) applies, in respect of each matter specified in paragraphs 1 and 3 to 8 of Schedule 2;”;
- (b) after paragraph (2) (c) (ii) insert—
- “(iii) and further where paragraph (3) applies, notification has been received under section 113E(4)(a) of the Police Act 1997 that the individual is not included on a specified adults' list (within the meaning of section 113E of that Act).”;
- (c) for paragraph (3) substitute—
- “(3) This paragraph applies—
- (a) where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued; and
- (b) the individual will not be engaging in regulated activity relating to children.”.
- (4) In regulation 12 (fitness of nurses supplied by an agency)—
- (a) for paragraph (1) (d) (ii) substitute—
- “(ii) where paragraph (3) applies, in respect of each matter specified in paragraphs 1 to 3 and 6 to 13 of Schedule 3;”;
- (b) in paragraph (1) (d) insert after paragraph (1) (d) (ii)—
- “(iii) and further, where paragraph (3) applies, notification has been received under section 113E (4) (a) of the Police Act 1997 that the individual is not included on a specified adults' list (within the meaning of section 113E of that Act).”;
- (c) for paragraph (2)(ii) substitute—
- “(ii) where paragraph (3) applies, in respect of each matter specified in paragraphs 1 and 3 to 8 of Schedule 2;”;

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(4) S.I. 2003/2527 (W.242). Relevant amending instruments are S.I. 2003/3054 (W.292) and S.I. 2004/2414 (W.222).

- (d) after paragraph (2) (ii) insert—
  - “(iii) and further, where paragraph (3) applies, notification has been received under section 113E (4) (a) of the Police Act 1997 that the individual is not included on a specified adults' list (within the meaning of section 113E of that Act).”;
- (e) for paragraph (3) of substitute—
  - “(3) This paragraph applies—
    - (a) where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued; and
    - (b) the individual will not be engaging in regulated activity relating to children.”.
- (5) In Schedule 2 (information required in respect of registered providers and managers of an agency and nurses responsible for selecting nurses for supply to service users)—
  - (a) for paragraph 2 substitute—
    - “2. Either—
      - (a) where the certificate is required for a purpose related to registration under Part 2 of the Act or the position falls within 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 which includes, as applicable, suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act) or suitability information relating to children (within the meaning of section 113BA (2) of that Act) or both; or
      - (b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.”;
    - (b) omit paragraphs 9 and 10.
  - (6) In Schedule 3 (information required in respect of nurses to be supplied by an agency)—
    - (a) for paragraph 4 substitute—
      - “4. Either—
        - (a) where the certificate is required for a purpose related to registration under Part 2 of the Act or the position falls within 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 which includes, as applicable, suitability information relating to vulnerable adults (within the meaning of section 113BB (2) of that Act) or suitability information relating to children (within the meaning of section 113BA(2) of that Act) or both ; or
        - (b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997.”;
      - (b) omit paragraphs 5 and 14.

#### **Amendments to the Private and Voluntary Health Care (Wales) Regulations 2002**

**14.**—(1) The Private and Voluntary Health Care (Wales) Regulations 2002(5) are amended as follows.

- (2) In regulation 9 (fitness of registered provider)—
  - (a) for paragraph (3) (c) (ii) substitute—

- “(ii) where paragraph (4) applies, in respect of each of the matters specified in paragraphs 1 and 3 to 7 of Schedule 2;”;
  - (b) for paragraph (3) (c) (iii) substitute—
    - “(iii) and further, where paragraph (4) applies, notification has been received under section 113E (4) (a) of the Police Act 1997 that the individual is not included on a specified adults' list (within the meaning of section 113E of that Act).”;
  - (c) for paragraph (4) substitute—
    - “(4) This paragraph applies—
      - (a) where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued; and
      - (b) the individual will not be engaging in regulated activity relating to children.”.
- (3) In regulation 11 (fitness of manager)—
  - (a) for paragraph (2) (c) (ii) substitute—
    - “(ii) where paragraph (3) applies, in respect of each of the matters specified in paragraphs 1 and 3 to 7 of Schedule 2;”;
  - (b) for paragraph (2) (c) (iii) substitute—
    - “(iii) and further, where paragraph (3) applies, notification has been received under section 113E (4) (a) of the Police Act 1997 that the individual is not included on a specified adults' list (within the meaning of section 113E of that Act).”;
  - (c) for paragraph (3) substitute—
    - “(3) This paragraph applies—
      - (a) where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued; and
      - (b) the individual will not be engaging in regulated activity relating to children.”.
- (4) In regulation 18 (fitness of workers)—
  - (a) for paragraph (2) (d) (ii) substitute—
    - “(ii) where paragraph (3) applies, in respect of each of the matters specified in paragraphs 1 and 3 to 7 of Schedule 2;”;
  - (b) after paragraph (2) (d) (ii) insert—
    - “(iii) and further, where paragraph (3) applies, notification has been received under section 113E (4) (a) of the Police Act 1997 that the individual is not included on a specified adults' list (within the meaning of section 113E of that Act).”;
  - (c) for paragraph (3), substitute—
    - “(3) This paragraph applies—
      - (i) where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued; and
      - (ii) the individual will not be engaging in regulated activity relating to children.”;
  - (d) in paragraph (4)(b) for the words “unless paragraph (5) applies” substitute “unless paragraph (5) or (5A) applies”;
  - (e) for paragraph (5) (b) (iii) substitute—

- “(iii) where paragraph (3) applies, notification has been received under section 113E (4) (a) of the Police Act 1997 that the individual is not included on a specified adults' list (within the meaning of section 113E of that Act).”;
- (f) in paragraph (5A) after sub paragraph (b) insert—
- “(ba) notification has been received under section 113E (4) (a) of the Police Act 1997 that the individual is not included on a specified adults' list (within the meaning of section 113E of that Act).”.
- (5) In Schedule 2 (information required in respect of persons seeking to carry on, manage or work at an establishment)—
- (a) for paragraph 2 substitute—
- “2. Either—
- (a) where the certificate is required for a purpose related to registration under Part 2 of the Act or the position falls within 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 which includes, as applicable, suitability information relating to vulnerable adults (within the meaning of section 113BB (2) of that Act) or suitability information relating to children (within the meaning of section 113BA (2) of that Act) or both, in respect of which less than three years have elapsed since it was issued; or
- (b) in any other case, a criminal record certificate issued under section 113A of the Police Act 1997 in respect of which less than three years have elapsed since it was issued.”;
- (b) omit paragraphs 8 and 9 .

### **Amendments to the Private Dentistry (Wales) Regulations 2008**

- 15.**—(1) The Private Dentistry (Wales) Regulations 2008(6) are amended as follows.
- (2) For paragraph (2) (j) of regulation 5 (information and documents to be provided by an applicant) substitute—
- “(j) an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes, as applicable, suitability information relating to vulnerable adults (within the meaning of section 113BB(2) of that Act) or suitability information relating to children (within the meaning of section 113BA (2) of that Act) or both, the application for which was countersigned on behalf of the registration authority.”.
- (3) For paragraph (4) of regulation 13 (fitness of registered persons) substitute—
- “(4) The registration authority may at any time require the registered person to apply for an enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes, as applicable, suitability information relating to vulnerable adults (within the meaning of section 113BB (2) of that Act) or suitability information relating to children (within the meaning of section 113BA(2) of that Act) or both, such application to be countersigned on behalf of the registration authority.”.
- (4) For paragraph 2 of Schedule 2 (information and documents to be available in respect of registered persons) substitute—
- “2. An enhanced criminal record certificate issued under section 113B of the Police Act 1997 which includes, as applicable, suitability information relating to vulnerable adults (within the meaning of section 113BB (2) of that Act) or suitability information relating to

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children (within the meaning of section 113BA (2) of that Act) or both, in respect of which less than three years have elapsed since it was issued.”.