



# Children and Families (Wales) Measure 2010

## 2010 nawm 1

### PART 2

#### CHILD MINDING AND DAY CARE FOR CHILDREN

##### *Disqualification from registration*

#### **38 Disqualification from registration**

- (1) In this section “registration” means registration under this Part.
- (2) Regulations may provide for a person to be disqualified from registration.
- (3) The regulations may, in particular, provide for a person to be disqualified from registration if—
  - (a) the person is barred from regulated activity relating to children (within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006 (c. 47));
  - (b) an order of a prescribed kind has been made with respect to the person;
  - (c) an order of a prescribed kind has been made at any time with respect to a child who has been in the person’s care;
  - (d) a requirement of a prescribed kind has been imposed at any time with respect to such a child, under or by virtue of any enactment;
  - (e) the person has at any time been refused registration under this Part of this Measure, Part 3 of the Childcare Act 2006 (c. 21) or under Part 10 or Part 10A of the Children Act 1989 (c. 41) or any prescribed enactment, or had any such registration cancelled;
  - (f) the person has been convicted of an offence of a prescribed kind or has been discharged absolutely or conditionally for such an offence;
  - (g) the person has been given a caution in respect of an offence of a prescribed kind;

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- (h) the person has at any time been disqualified from fostering a child privately (within the meaning of the Children Act 1989 (c. 41));
  - (i) a prohibition has been imposed on the person at any time under section 69 of the Children Act 1989 (c. 41), section 10 of the Foster Children (Scotland) Act 1984 (c. 56) or any prescribed enactment;
  - (j) the person's rights and powers with respect to a child have at any time been vested in a prescribed authority under a prescribed enactment.
- (4) Regulations may provide for a person to be disqualified from registration if—
- (a) the person lives in the same household as another person who is disqualified from registration, or
  - (b) the person lives in a household in which another person who is disqualified is employed.
- (5) Regulations under subsection (2) or (4) may provide for a person not to be disqualified from registration (and in particular may provide for a person not to be disqualified from registration for the purposes of section 39) by reason of any fact which would otherwise cause the person to be disqualified if—
- (a) the person has disclosed the fact to the Welsh Ministers, and
  - (b) the Welsh Ministers have consented in writing to the person not being disqualified from registration and have not withdrawn their consent.
- (6) In this section—
- “caution” includes a reprimand or warning within the meaning of section 65 of the Crime and Disorder Act 1998 (c. 37);
  - “enactment” means any enactment having effect at any time in any part of the United Kingdom.
- (7) A conviction in respect of which a probation order was made before 1 October 1992 (which would not otherwise be treated as a conviction) is to be treated as a conviction for the purposes of this section.

### **39 Consequences of disqualification**

- (1) A person who is disqualified from registration under this Part by regulations under section 38 must not—
- (a) act as a child minder in Wales,
  - (b) provide day care in Wales or be directly concerned in the management of any provision of day care in Wales.
- (2) A person must not employ, in connection with the provision of day care or child minding in Wales, a person who is disqualified from registration under this Part by regulations under section 38.
- (3) A person who contravenes subsection (1) or (2) commits an offence.
- (4) A person who contravenes subsection (1) is not guilty of an offence under subsection (3) if—
- (a) the person is disqualified from registration by virtue only of regulations under section 38(4), and
  - (b) the person proves that he or she did not know, and had no reasonable grounds for believing, that he or she was living—

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- (i) in the same household as a person who was disqualified from registration, or
  - (ii) in a household in which such a person was employed.
- (5) A person who contravenes subsection (2) is not guilty of an offence under subsection (3) if the person proves that he or she did not know, and had no reasonable grounds for believing, that the person employed was disqualified from registration.
- (6) A person guilty of an offence under subsection (3) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 5 on the standard scale, or to both.
- (7) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44) (alteration of penalties for summary offences), the reference in subsection (7) to 51 weeks is to be read as a reference to 6 months.