

WELSH STATUTORY INSTRUMENTS

2022 No. 1188

The Child Minding and Day Care (Disqualification) (No. 2) (Wales) Regulations 2022

Title and commencement

1.—(1) The title of these Regulations is the Child Minding and Day Care (Disqualification) (No. 2) (Wales) Regulations 2022.

(2) These Regulations come into force on 6 December 2022 immediately after the Child Minding and Day Care (Disqualification) (Wales) Regulations 2022(1).

Commencement Information

II [Reg. 1](#) in force at 6.12.2022 in accordance with [reg. 1\(2\)](#)

Interpretation

2.—(1) In these Regulations—

“the 1989 Act” (“*Deddf 1989*”) means the Children Act 1989(2);

“the 2000 Act” (“*Deddf 2000*”) means the Criminal Justice and Court Services Act 2000(3);

“direction” (“*cyfarwyddyd*”) means a direction made, or which has effect as if made, under section 142 of the Education Act 2002(4) on the grounds set out in subsection (4)(a), (b) or (d) of that section(5);

“disqualified” (“*wedi ei anghymhwyso*”) means disqualified from registration as a child minder or provider of day care under Part 2 of the Measure;

“domestic premises” (“*mangre ddomestig*”) has the meaning given by section 19(6) of the Measure;

“the Measure” (“*y Mesur*”) means the Children and Families (Wales) Measure 2010;

“relevant order” (“*gorchymyn perthnasol*”) means—

- (a) an order made by the Crown Court, the Court of Appeal, the Court Martial or the Court Martial Appeal Court that the individual in question be admitted to hospital, or
- (b) a guardianship order(6).

(2) In these Regulations, a person (“P”) has been “found to have committed” an offence if P has been—

(1) [S.I. 2022/1066 \(W. 224\)](#).

(2) 1989 c. 41.

(3) 2000 c. 43.

(4) 2002 c. 32.

(5) Section 142 was repealed by section 63(2) of, and Schedule 10 to, the Safeguarding Vulnerable Groups Act 2006 (c. 47), subject to savings and transitional provisions specified in articles 4(2) and (3), and 7 of [S.I. 2009/2611](#).

(6) As defined in section 30(1) of the Criminal Justice and Court Services Act 2000 Act (c. 43) (“the 2000 Act”). Section 30 was repealed by section 63(2) of, and Schedule 10 to, the Safeguarding Vulnerable Groups Act 2006, subject to savings specified in article 5 of [S.I. 2012/2231](#).

- (a) convicted of an offence;
- (b) found not guilty of an offence by reason of insanity;
- (c) found to be under a disability and to have done the act charged against them in respect of such an offence;
- (d) on or after 6 April 2007, given a caution in respect of an offence by a police officer;
- (e) on or after 8 April 2013, given a youth caution by a police officer, in respect of an offence which P has admitted⁽⁷⁾.

(3) In these Regulations, P has been found to have committed an offence that is “related to” an offence if P has been found to have committed an offence of—

- (a) attempting, conspiring or incitement to commit that offence, or
- (b) aiding, abetting, counselling or procuring the commission of that offence.

Commencement Information

I2 [Reg. 2](#) in force at 6.12.2022 in accordance with [reg. 1\(2\)](#)

Care of children and offences against children or adults

3.—(1) Subject to paragraphs (9), (10) and (11) and regulation 9, a person (“P”) is disqualified if any of paragraphs (2) to (8) apply.

(2) Any of the orders or other determinations specified in Schedule 1 has been made—

- (a) with respect to P,
- (b) which prevents P from being registered in relation to any facility in which children are looked after or from being involved in the management of or otherwise concerned with the provision of any such facility, or
- (c) with respect to a child who has been in P’s care.

(3) An order has been made with respect to P under section 104 of the Sexual Offences Act 2003⁽⁸⁾ despite the offence having been repealed in England and Wales.

(4) P has been found to have committed an offence against a child within the meaning of section 26(1) of the 2000 Act⁽⁹⁾ despite the offence having been repealed.

(5) P—

- (a) has been found to have committed any offence specified in paragraph 1 of Schedule 2 or an offence that is related to such an offence, or
- (b) falls within paragraph 2 of that Schedule,

despite the fact that the statutory offences in that Schedule have been repealed.

(6) P has been found to have committed any offence other than an offence referred to in paragraph (4) or (5) involving bodily injury to, or death of, a child.

⁽⁷⁾ Section 66ZA of the Crime and Disorder Act 1998 (c. 37) in relation to youth cautions was inserted by section 135 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) and came into force on 8 April 2013.

⁽⁸⁾ 2003 c. 42. Section 104 was repealed in relation to England and Wales by section 113(1) of, and paragraphs 1 and 3 of Schedule 5 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) (“the 2014 Act”). Section 104 remains in force in Northern Ireland and Scotland but is subject to repeal in Scotland by section 39(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (asp 22) (“the 2016 Act”). For transitional provisions and savings see section 114(1), (2), and (4) to (6) of the 2014 Act and section 40 of the 2016 Act.

⁽⁹⁾ Section 26 was repealed by section 63(2) of, and Schedule 10 to, the Safeguarding Vulnerable Groups Act 2006, subject to savings specified in article 5 of S.I. 2012/2231.

(7) P has been found to have committed any offence specified in Schedule 3 or an offence that is related to such an offence.

(8) P has been—

- (a) found to have committed any offence, committed against a person aged 18 or over, mentioned in paragraph 2 of Schedule 4 to the 2000 Act⁽¹⁰⁾ or an offence that is related to such an offence, or
- (b) charged with any offence, committed against a person aged 18 or over, mentioned in paragraph 2 of Schedule 4 to the 2000 Act or an offence that is related to such an offence in respect of which a relevant order has been imposed by a senior court,

despite the fact that the statutory offences in that Schedule have been repealed.

(9) P is not disqualified under paragraphs (1) to (8) in respect of any order, determination or offence if—

- (a) P has successfully appealed against the order, determination or conviction,
- (b) a caution in respect of that offence has been withdrawn or set aside,
- (c) a direction based wholly or in part on the offence has been revoked, or
- (d) an order has been made under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000⁽¹¹⁾ or section 79 or 80 of the Sentencing Code⁽¹²⁾ discharging P absolutely or conditionally in respect of that offence.

(10) P is not disqualified by virtue of paragraph (2)—

- (a) if an order is made under the 1989 Act under which P was placed in the care or under the supervision of a designated local authority or similar body, unless an order has also been made as a result of P's care of their own child, or
- (b) where P is a foster carer or adoptive parent of a child, and that child is or was made the subject of a care or supervision order under the 1989 Act, unless the order is made as a result of P's care of that child.

(11) P is not disqualified from registration by virtue of paragraph (2) in respect of any refusal or cancellation of registration under the provisions set out in paragraph 23(c) of Schedule 1 if—

- (a) the refusal or cancellation is in respect of registration with a child-minder agency, or
- (b) the sole reason for the refusal or cancellation of registration was the failure to pay any fee prescribed under Part 3 of the Children and Young Persons Act (Northern Ireland) 1968⁽¹³⁾.

Commencement Information

I3 [Reg. 3](#) in force at 6.12.2022 in accordance with [reg. 1\(2\)](#)

Overseas offences

4.—(1) Subject to regulation 9, a person (“P”) is disqualified if P 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

⁽¹⁰⁾ Schedule 4 was repealed by section 63(2) of, and Schedule 10 to, the Safeguarding Vulnerable Groups Act 2006.

⁽¹¹⁾ 2000 c. 6. Section 12 was repealed by paragraph 1 of Schedule 28 to the Sentencing Act 2020 (c. 17), subject to savings and transitional provisions specified in sections 412 and 416(7) and paragraphs 1, 2, 4 and 5 of Schedule 27.

⁽¹²⁾ Section 1(1) of the Sentencing Act 2020 provides that Parts 2 to 13 of that Act together make up a code called the “Sentencing Code”.

⁽¹³⁾ 1968 c. 34 (N.I.). Section 127 was repealed by article 185(2) of, and Schedule 10 to, S.I. 1995/755 (N.I. 2).

- (b) would constitute an offence requiring disqualification from registration under these Regulations if it had been done in any part of the United Kingdom.
- (2) In paragraph (1), P 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) P has been convicted of an offence (whether or not P has been punished for it),
 - (b) P 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 P 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 P is under a disability and did the act charged against P.
- (3) P is not 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.

Commencement Information

I4 [Reg. 4](#) in force at 6.12.2022 in accordance with [reg. 1\(2\)](#)

Protection of Children Act list

5. A person who is included in the list kept under section 1 of the Protection of Children Act 1999⁽¹⁴⁾ (list of those considered by the Secretary of State unsuitable to work with children) is disqualified.

Commencement Information

I5 [Reg. 5](#) in force at 6.12.2022 in accordance with [reg. 1\(2\)](#)

Direction in relation to the employment of teachers etc.

6.—(1) Subject to regulation 9, a person (“P”) is disqualified if any of the following provisions of this regulation apply to P.

(2) P is subject to a direction.

(3) P’s name is on any list kept for the purposes of regulations made under article 70(2)(e) or 88A(1) and (2)(b) of the Education and Libraries (Northern Ireland) Order 1986⁽¹⁵⁾.

Commencement Information

I6 [Reg. 6](#) in force at 6.12.2022 in accordance with [reg. 1\(2\)](#)

⁽¹⁴⁾ 1999 c. 14. Section 1 of this Act was repealed by section 63(2) of and Schedule 10 to the Safeguarding Vulnerable Groups Act 2006, subject to savings and transitional provisions specified in article 5 of S.I. 2009/2611.

⁽¹⁵⁾ S.I. 1986/594 (N.I. 3). Articles 70(2)(e) and 88A(2)(b) were amended by S.I. 2007/1351 (N.I. 11).

Persons barred from regulated activity relating to children

7. A person who is barred from regulated activity relating to children within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006 is disqualified.

Commencement Information

I7 [Reg. 7](#) in force at 6.12.2022 in accordance with [reg. 1\(2\)](#)

Persons living or working on premises where a disqualified person lives

8. Subject to regulation 9, a person (“P”) is disqualified if P—

- (a) (i) lives in the same household as another person who is disqualified from registration, or
- (ii) lives in a household in which any such person is employed, and
- (b) acts or intends to act as a childminder on domestic premises used by the household of which P is a member.

Commencement Information

I8 [Reg. 8](#) in force at 6.12.2022 in accordance with [reg. 1\(2\)](#)

Waivers

9.—(1) Subject to paragraph (2), where a person (“P”) would be disqualified by virtue of regulation 3, 4, 6(1) and (3), or 8 but has disclosed to the Welsh Ministers the facts which would otherwise cause P to be disqualified, and the Welsh Ministers have given written consent and have not withdrawn that consent, then the person is not, by reason of the facts so disclosed, to be regarded as disqualified for the purpose of these Regulations.

(2) In relation to a person who would be disqualified by virtue of regulation 3(4), this regulation does not apply where a court has made an order under section 28(4), 29(4) or 29A(2) of the 2000 Act⁽¹⁶⁾.

(3) A person is not disqualified if, prior to 1 April 2002, the person—

- (a) disclosed the facts which would disqualify the person under these Regulations to an appropriate local authority under paragraph 2 of Schedule 9 to the 1989 Act⁽¹⁷⁾, and
- (b) obtained the written consent of that local authority.

Commencement Information

I9 [Reg. 9](#) in force at 6.12.2022 in accordance with [reg. 1\(2\)](#)

⁽¹⁶⁾ Sections 28(4), 29(4) and 29A(2) were repealed by section 63(2) of, and Schedule 10 to, the Safeguarding Vulnerable Groups Act 2006, subject to savings specified in article 5 of [S.I. 2012/2231](#).

⁽¹⁷⁾ Schedule 9 was repealed in relation to England and Wales by section 79(5) of the Care Standards Act 2000 (c. 14) and in relation to Scotland by section 80 of, and Schedule 4 to, the Regulation of Care (Scotland) Act 2001 (asp 8).

Appeals

10. Any determination made by the Welsh Ministers as to whether to give consent to waive disqualification under regulation 9(1) is a prescribed determination for the purposes of section 37(2)(a) of the Measure (appeals).

Commencement Information

I10 [Reg. 10](#) in force at 6.12.2022 in accordance with [reg. 1\(2\)](#)

Duty of disclosure

11.—(1) A person who is registered under Part 2 of the Measure (“registered person”) must provide the following information to the Welsh Ministers—

- (a) details of any order, determination, conviction or other ground for disqualification from registration made or applying in relation to a person listed in paragraph (2) which results in that person being disqualified from registration under these Regulations;
- (b) the date when the order, determination or conviction was made or when any other ground for disqualification from registration arose;
- (c) the body or court by which the order, determination or conviction was made and the sentence, if any, imposed;
- (d) in relation to an order or conviction, a copy of the relevant order or court order certified by the issuing body or court.

(2) The persons in respect of whom the information referred to in paragraph (1) must be provided are—

- (a) the registered person, and
- (b) any person who lives in the same household as the registered person or who is employed in that household.

(3) The information referred to in paragraph (1) must be provided to the Welsh Ministers as soon as reasonably practicable, but in any event within 14 days of the time when the registered person became aware of that information or ought reasonably to have become aware of it if the registered person had made reasonable enquiries.

(4) The requirement in paragraph (2)(b) only applies in respect of household members or those employed in the household of a registered childminder.

(5) Any allegation that a registered person has failed to meet the requirements of this regulation may be taken into account by the Welsh Ministers in the exercise of their functions under Part 2 of the Measure (including cancellation of registration in accordance with section 31(1) of the Measure).

(6) A person who without reasonable excuse fails to comply with the requirements of this regulation is guilty of an offence.

(7) A person found guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Commencement Information

I11 [Reg. 11](#) in force at 6.12.2022 in accordance with [reg. 1\(2\)](#)

Revocation and consequential amendment

12.—(1) The Child Minding and Day Care (Disqualification) (Wales) Regulations 2022 are revoked⁽¹⁸⁾.

(2) In the Child Minding and Day Care (Wales) Regulations 2010⁽¹⁹⁾, in regulation 2(1), in the definition of “disqualified”, in paragraph (a) after

(3) “(Disqualification)” insert “(No. 2)”.

Commencement Information

I12 [Reg. 12](#) in force at 6.12.2022 in accordance with [reg. 1\(2\)](#)

14 Tachwedd 2022

Julie Morgan
Deputy Minister for Health and Social Services
under authority of the Minister for Health and
Social Services, one of the Welsh Ministers

⁽¹⁸⁾ [S.I. 2022/1066 \(W. 224\)](#). Those Regulations revoked the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010 ([S.I. 2010/1703 \(W. 163\)](#)).

⁽¹⁹⁾ [S.I. 2010/2574 \(W. 214\)](#).

Changes to legislation:

There are currently no known outstanding effects for the The Child Minding and Day Care (Disqualification) (No. 2) (Wales) Regulations 2022.