

SL(6)272 – The Child Minding and Day Care (Disqualification) (Wales) Regulations 2022

Background and Purpose

The Child Minding and Day Care (Disqualification)(Wales) Regulations 2022 (the “Regulations”) set out the categories of persons who are disqualified from registration in Wales as a child minder or provider of day care under Part 2 of the Children and Families (Wales) Measure 2010.

Persons disqualified under these Regulations must not act as child minders in Wales, provide day care or be concerned in the management of any provision of day care.

The Regulations revoke similar regulations from 2010 and update the list of offences, orders and determinations which disqualifies a person from working in regulated childcare in Wales.

Schedule 3 to the Regulations includes further additional criminal offences over and above those which currently appear in the equivalent regulations applying in England. These include offences associated with voyeurism and the use of violence, threats or any form of coercion to force another person into marriage.

The Regulations remove provisions which disqualify people from being registered to provide regulated childcare based on the fact that they live with someone who is disqualified or someone who works in their household is disqualified. The Regulations also remove some anomalies in existing regulations to ensure that people who have been subject to a Care or Supervision Order themselves in the past are not automatically disqualified from registration.

Procedure

Negative

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following 11 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2 (v) – that for any particular reason its form or meaning needs further explanation.

A “guardianship order” constitutes a “relevant order” for the purposes of the Regulations.



A guardianship order is defined in footnote 1 on page 5 by reference to section 30(1) of the Criminal Justice and Court Services Act 2000 (the “2000 Act”).

As explained in the footnote, section 30 of the 2000 Act has been repealed. It is subject to specific savings provisions in SI. 2012/2231, but these do not extend to section 30.

It is therefore unclear whether the term ‘guardianship order’ has been intentionally defined by reference to a repealed provision, or whether it is an error.

A Welsh Government response is requested to clarify.

2. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 12(3) purports to amend and substitute a date in the Child Minding and Day Care (Wales) Regulations 2010. It states:

*[...] in regulation 2(1), **in paragraph (a)** for “2010” insert “2022”. [emphasis added]*

There are four separate paragraphs (a) in regulation 2, therefore, we do not consider that the drafting of this substitution is sufficiently precise.

Regulation 2 is an interpretation provision and is in the form of an unnumbered list. Paragraph 7.17(1) of [Writing Laws for Wales](#) states that when inserting an entry into an unnumbered list, the most precise way to identify the location of the amendment is usually to specify the existing entry after which the insertion is to be made.

In this regard, we consider the following drafting would more clearly identify the intended location of the substitution:

*[...] in regulation 2(1), **in the definition of “disqualified”**, in paragraph (a) [...]*

3. Standing Order 21.2 (v) – that for any particular reason its form or meaning needs further explanation.

Schedule 1 to the Regulations list a number of orders and determinations which disqualify a person from registering as a child minder in Wales.

In particular, paragraphs 21(b) and (c) of Schedule 1 (the “Relevant Paragraphs”) relate to circumstances which disqualify a person as a consequence of certain determinations under the Care Standards Act 2000 (“CSA 2000”).

For these purposes, the Relevant Paragraphs both refer to section 20(1) of the CSA 2000. This section makes provision about the “urgent procedure for cancellation in England”. Similar provision is made for Wales in section 20A of the CSA 2000, but this section is not captured by the Relevant Paragraphs.

A Welsh Government response is requested to clarify whether section 20A of the CSA 2000 has been intentionally omitted from the Relevant Paragraphs.



4. Standing Order 21.2 (vii) – that there appears to be inconsistencies between the meaning of its English and Welsh texts

In paragraph 2(e) of Schedule 2 to the Regulations, “gross indecency” has been translated as “anwedduster garw”.

Whilst we note that “anwedduster garw” has previously been used in Welsh statutory instruments; “garw” is not an obvious translation for “gross” in this context.

We note that “gross indecency” is more often translated as “anwedduster difrifol” or “anwedduster dybryd”, which we consider as more appropriate.

In this respect, it would be useful to standardise the translation to ensure the accuracy and consistency of Welsh legislation.

5. Standing Order 21.2 (vii) – that there appears to be inconsistencies between the meaning of its English and Welsh texts

In paragraph 2(j) of Schedule 2, there is a numbering discrepancy between the English and Welsh texts.

The English text refers to section 30 of the Sexual Offences Act 1965. The Welsh text refers to section 29 of the same.

On the basis of the words in brackets in paragraph 2(j), it appears that the English text is accurate.

6. Standing Order 21.2 (vii) – that there appears to be inconsistencies between the meaning of its English and Welsh texts

In paragraph 1(4)(i) of Schedule 3, there is a numbering discrepancy between the English and Welsh texts.

The English text refers to section 63 of the Terrorism Act 2000. The Welsh text refers to section 64 of the same.

On the basis of the words in brackets in paragraph 1(4)(i), it appears that the English text is accurate.

7. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The reference to section 23 of the Female Genital Mutilation Act 2003 (the “2003 Act”) in paragraph 1(16)(c) of Schedule 3 to the Regulations should be a reference to section 3 of the 2003 Act.

Section 3 of the 2003 Act relates to the offence of assisting a non-UK person to mutilate overseas a girl’s genitalia, as referenced in the Schedule to the Regulations. The 2003 Act does not contain a section 23.



This error is also in the Welsh text.

8. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The reference to section 4 of the Female Genital Mutilation Act 2003 (the “2003 Act”) in paragraph 1(16)(d) of Schedule 3 to the Regulations is incorrect.

Section 4 of the 2003 Act makes provision relating to the extra-territorial nature of offences committed under the 2003 Act.

However, paragraph 1(16)(d) of Schedule 3 refers to the offence of “failing to protect a girl from risk of female genital mutilation”, which is section 3A of the 2003 Act.

9. Standing Order 21.2 (v) – that for any particular reason its form or meaning needs further explanation.

Paragraph 2(6)(c) to Schedule 3 refers to “offences relating to private fostering” within section 15 of the Foster Children (Scotland) Act 1984 (the “1984 Act”).

Section 15 of the 1984 Act is entitled ‘Offences related to foster children’.

Our understanding is that ‘private fostering’ has a distinct meaning, generally referring to fostering arrangements made without the involvement of local authorities.

Section 15 of the Act does not seem to encompass such arrangements, and the inclusion of the word ‘private’ in paragraph 2(6)(c) to the Regulations may cause confusion.

A Welsh Government response is requested to clarify.

10. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The statutory reference in paragraph 3(9) of Schedule 3 to the Regulations is incorrect.

The provision cites the Sexual Offences (Northern Ireland) Order 2009. As far as can be ascertained, there is no such order from 2009

The Welsh text refers to the Sexual Offences (Northern Ireland) Order 2008 (SI. 2008/1769), which appears to be the correct reference.

11. Standing Order 21.2 (vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

The reference to “Jersey Law 1969” in paragraph 4(a) of Schedule 3 to the Regulations is inaccurate and incomplete. It should state the “Children (Jersey) Law 1969”.

Merits Scrutiny

The following 5 points are identified for reporting under Standing Order 21.3 in respect of this instrument.



12. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The Regulations revoke, replace and update the “2010 Regulations”¹. One key policy change from the 2010 Regulations is in respect of disqualification from regulated childcare by association.

Under the 2010 Regulations, a person can be disqualified from working in childcare in Wales based on their association with someone who lives or works in their household who is disqualified (i.e. who has committed an offence or been made subject of orders or determinations falling within the scope of the 2010 Regulations).

The 2022 Regulations have been drafted to remove the disqualification by association provision in respect of registered persons providing childcare on non-domestic premises (normally a person providing care away from their home, such as in a day care setting).

The effect of this is that a person is not disqualified from providing regulated childcare at a non-domestic premises, notwithstanding that they live with someone who is disqualified. However, the [consultation document](#) for the Regulations states:

“the provision will still apply to the majority of child minders who work from their home”.

A Regulatory Impact Assessment in respect of this policy change (and others) is contained in the Explanatory Memorandum.

It notes that the level of risk to children’s safety arising from the association of a registered person in non-domestic settings “is considerably lower” than the risk posed in domestic settings. It also notes that such change will align policies across England and Wales

13. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

A [consultation](#) was undertaken on a draft of the Regulations between 31 March – 23 June 2022. The Committee notes the following paragraphs from the Explanatory Memorandum:

The consultation was drawn to the attention of a wide audience of key stakeholders including all registered childcare and play work providers, local authorities, the Children’s Commissioner for Wales, and third sector organisations representing the childcare and play work organisations. [...]

There was broad agreement to all the proposals in the consultation. No amendments were considered necessary to the Regulations. [...]

14. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The Committee notes certain concerns about the accessibility of the Regulations

¹ The Child Minding and Day Care (Disqualification)(Wales) Regulations 2010



Users of the Regulations must check the Schedules to ascertain which orders, determinations or offences disqualify them from being involved in regulated childcare in Wales. Generally, the entry listed in the Schedules clearly identify the disqualifying provision. For example:

*"a refusal of P's application for registration **under section 13** of the Care Standards Act 2000" [emphasis added]*

However, a reference to the relevant sections of each legal instrument has not been included for every entry. One example is paragraph 15 of Schedule 1 to the Regulation. This provides that a person is disqualified if they have been subject to:

"A fit person order, a parental rights order or a training school order under the Children and Young Persons Act (Northern Ireland) 1968".

This Act contained 182 sections. By not expressly inserting the relevant section number under which such orders were made, it is challenging for the reader to identify the relevant provisions of the cited Act. In this particular example, the difficulties are compounded as the relevant provisions have subsequently been repealed and may not be accessible without specialist legislative software.

We also note accessibility concerns in respect of citing legal instruments from the Channel Islands and the Isle of Man.

One particular example is in respect of paragraph 23(f) of Schedule 1 which refers to the Children and Young Persons Act 2001. The Regulations state that this is an "Act of Tynwald". The first time this phrase is used, we consider it would be useful to assist the reader by adding a footnote explaining this means an Act passed by the Isle of Man parliament. Further, as the relevant provisions of this Act have been repealed, they are not easily accessible.

15. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Although the Committee notes that they do not form part of these Regulations themselves, over 40 errors have been found in the footnotes to these Regulations which have been notified separately to Welsh Government officials. Footnotes are a useful tool for readers of legislation only insofar as they are accurate and the Committee therefore encourages the Welsh Government to ensure that this is the case.

16. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Although the Committee notes that the Explanatory Note does not form part of these Regulations themselves, it is unclear whether a paragraph outlining regulation 9 is accurate.

Under regulation 9, a person is not disqualified from registering as a child minder or from providing day care if they receive a waiver by way of written consent, and such written consent has not been withdrawn.



The Explanatory Note states:

Regulation 9 does not apply where the disqualification arises from inclusion on List 99 or the list kept under section 1 of the Protection of Children Act 1999, being barred from regulated activity relating to children under the Safeguarding Vulnerable Groups Act 2006 or where a court has ordered that a person must not work in contact with children following a conviction for certain offences against children.

We interpret 'does not apply' in this context to mean that waivers are not permissible where a person has been subject to one of these outcomes.

However, our understanding of regulation 9 is that waivers are permissible in relation to all of these outcomes, except in relation to certain offences against children under the Criminal Justice and Court Services Act 2000 (as set out in regulation 9(2)).

A Welsh Government response is requested to clarify.

Welsh Government response

A Welsh Government response is required in relation to all reporting points, save for points 12 and 13.

Legal Advisers

Legislation, Justice and Constitution Committee

31 October 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee