

Government Response: The Child Minding and Day Care (Disqualification) (Wales) Regulations 2022

Technical Scrutiny points

The Committee has raised eleven points under Standing Order 21.1 in respect of this instrument.

Individual responses are provided below to each of the points raised. Welsh Government has determined, in light of the number and nature of the issues, to remake the Regulations to address the points raised. A further set of Regulations will be laid which will come into force immediately after this set which will revoke and replace them.

Technical Scrutiny point 1

Response

Section 30(1) of the Criminal Justice and Court Services Act 2000 was used as the reference point to explain the extent of the meaning of “guardianship” in the 2010 regulations although it was already repealed at that time.

The definition of “guardianship order” in section 30(1) of the Criminal Justice and Court Services Act 2000 is a useful reference point notwithstanding its repeal because, as well as including reference to the most commonly understood form of guardianship order under the Mental Health Act 1983, it also includes reference to the much rarer forms of guardianship under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957. Even though each of these three Acts has been repealed in its entirety by the Armed Forces Act 2006, the saving is an indicator that there is still potential for orders made under them to be live. Section 30 is an interpretation section so was not itself included in the saving.

Welsh Government acknowledges that it may be more accessible to refer directly to other legislative provisions which are included within the scope of a term’s meaning, even if they are repealed, rather than through a secondary reference which is itself repealed.

Technical Scrutiny point 2

Response

We acknowledge that there are four separate paragraphs (a) in regulation 2(1) of the Child Minding and Day Care (Wales) Regulations 2010. However, as only one paragraph (a) includes the year “2010” (or indeed, any date), it is considered that the reference to be substituted by paragraph 12(2) is unambiguous and does provide legal certainty. Welsh Government respectfully queries whether it is correct to raise this point under standing order 21.2 (vi) which refers to defective drafting or drafting which fails to fulfil statutory requirements.

However, Welsh Government acknowledges that it may provide greater assistance to the reader to identify the particular definition within an unnumbered list to indicate where the amendment is to be made.

Technical Scrutiny point 3

Response

Welsh Government agrees that absence of a reference to an order under section 20A CSA 2000 as a disqualifying order is an omission and will take steps to correct this.

Technical Scrutiny point 4

Response

The Welsh Government acknowledges the recommendation in favour of standardisation of translation of “*gross indecency*”.

“*Anwedduster garw*” has been used as the means of translating “*gross indecency*” in the 2010 Regulations and is the suggested translation in separate sources which suggests that this translation is both correct and acceptable. However, Welsh Government notes that “*anwedduster difrifol*” has been used in more recent Regulations in 2019.

We have raised this matter with professional colleagues concerned with legislative translation but in the short space of time between receiving the legal adviser’s report and drafting a response colleagues have not been able to give the matter full consideration. Welsh Government is content to feed back to the committee once consideration has been given and a view reached.

Technical Scrutiny point 5

Response

The Welsh Government is grateful to the LJCC for highlighting this reporting point, agrees with the point and will take steps to correct the Welsh text.

Technical Scrutiny point 6

Response

The Welsh Government is grateful to the LJCC for highlighting this reporting point, agrees with the point and will take steps to correct the Welsh text.

Technical Scrutiny point 7

Response

The Welsh Government is grateful to the LJCC for highlighting this reporting point, agrees with the point and will take steps to correct it.

Technical Scrutiny point 8

Response

The Welsh Government agrees with the point and will take steps to correct the reference so that it refers to section 3A Female Genital Mutilation Act 2003 (offence of failing to protect a girl from risk of genital mutilation).

Technical Scrutiny point 9

Response

The legal adviser's comment that "private fostering" generally refers to fostering arrangements made without the involvement of local authorities is correct and it is correct that the section heading for section 15 of the Foster Children (Scotland) Act 1984 ("the 1984 Act") is "Offences related to foster children" without indicating any limitation of the scope of the section to private fostering alone.

However, the drafting of the 1984 Act is done in such a way that all children of school age who are cared for by someone other than a parent or guardian are termed "foster children" (see section 1) and section 2 then exempts nearly all the sorts of foster children other than those who, in England and Wales, would be referred to as children who are "privately fostered". The inclusion of the word "private" will we think assist a reader familiar with the terminology used in England and Wales law to understand that the offences in question are those which relate to "private fostering" as understood in this jurisdiction.

Technical Scrutiny point 10

Response

The Welsh Government is grateful to the LJCC for highlighting this point and will take steps to correct the English text to make reference to Sexual Offences (Northern Ireland) Order 2008.

Technical Scrutiny point 11

Response

The Welsh Government thanks the LJCC for raising this point. Welsh Government will take steps to amend the reference to Children (Jersey) Law 1969.

Merit Scrutiny points

The Committee has raised five points under Standing Order 21.13 in respect of this instrument; three of which require a response.

Merit Scrutiny point 14

Response

Welsh Government acknowledges that it would provide greater assistance to the user of the legislation to identify the particular section numbers under which the orders in question are

made. References to the appropriate section number will be made at the same time that other matters requiring correction are addressed.

The Welsh Government agrees that inserting a footnote to explain that an “Act of Tynwald” means an Act passed by the Isle of Man Parliament would be helpful to the reader.

Merit Scrutiny point 15

Response

Whilst footnotes don't have legal effect, the Welsh Government acknowledges the importance of ensuring that footnotes are accurate to ensure they are of assistance to the reader.

Merit Scrutiny point 16

Response

The exclusion from the waiver procedure under regulation 9(2) applies in relation to persons who have been convicted of offences against children as defined in section 26(1) of the Criminal Justice and Court Services Act 2000 where the offence itself has since been repealed. Certain of those persons would, in addition to any other sentence, have been the subject of a disqualification order imposed by the court.

It is accepted that the explanatory note is not accurate because persons who were the subject of disqualification orders under sections 28(4), 29(4) or 29A(2) would not necessarily be on one or other of the lists kept by the Secretary of State and others who were on those lists would not necessarily have been subject to disqualification orders made by the court.