

2009 No. 2544 (W. 206)

EDUCATION, WALES

**The Education (Miscellaneous
Amendments relating to
Safeguarding Children) (Wales)
Regulations 2009**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to various sets of regulations made under the Education Act 1996 (c.56), the School Standards and Framework Act 1998 (c.38), and the Education Act 2002 (c.32) to reflect changes that will arise as a result of the commencement (on 12 October 2009) of the barring provisions in the Safeguarding Vulnerable Groups Act 2006 (c.47) (“the SVGA”) and the commencement of new provisions (inserted by the SVGA) in the Police Act 1997 (c.50).

Until 12 October 2009, information as to whether a person is barred from working with children is available with a standard or an enhanced criminal record certificate. The barred information included in a criminal record certificate currently does not include information as to whether a person is on the children’s barred list established under section 2 of the SVGA. The children’s barred list is established and maintained by the Independent Safeguarding Authority (“ISA”); the ISA is referred to in the SVGA as the Independent Barring Board (or IBB) but this is likely to be amended in the near future by primary legislation and substituted by a reference to the ISA.

In some of the regulations being amended, the amendments made by these Regulations add a reference to whether a person is barred from working with children under the SVGA to the references to the barring provisions pre-dating the SVGA. In addition, the amendments to regulations 2(2) and 3(2) add a reference to whether a person is subject to a direction under section 142 of the Education Act 2002 to the references to the barring provisions pre-dating the SVGA, as there may be persons subject to such a

direction in respect of whom it has not been determined to add them to the list of people barred from working with children under the SVGA.

These Regulations also align provisions in the regulations being amended (which relate to barred checks) with new provisions in the Police Act 1997 (inserted by the SVGA) which will apply from 12 October 2009. For example, amendments have been made to remove references to “children’s suitability statement” and to update the amended regulations, where necessary, with references to “suitability information relating to children” within the meaning of section 113BA(2) of the Police Act 1997.

From 12 October 2009, information as to whether a person is barred from working with children will only be provided with an enhanced criminal record certificate in cases prescribed under section 113BA of the Police Act 1997. Amendments to some of the regulations have been included to reflect this to ensure that where information as to whether a person is barred is currently obtained, it will continue to be available from 12 October 2009.

From 12 October 2009, a certificate which states that someone is barred from working with children will mean that the person is either on one of the current barred lists or is barred from working with children under the new SVGA scheme. A check in relation to both the current lists and the new children’s barred list under the SVGA will continue to be required for a period of time from 12 October 2009 until the ISA has made a decision whether to transfer an individual to the children’s barred list in relation to all relevant cases. Relevant cases are where an individual is still on one of the existing lists or where a case is still being determined after 12 October 2009 (for limited purposes) under the old regime.

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EDUCATION, WALES

**The Education (Miscellaneous
Amendments relating to
Safeguarding Children) (Wales)
Regulations 2009**

Made 17 September 2009

Laid before the National Assembly for Wales
21 September 2009

Coming into force 12 October 2009

The Welsh Ministers in exercise of the powers conferred on the Secretary of State by section 342(2), (4) and (5), section 569 of the Education Act 1996(1) and by section 21(5) and (6), section 138(7) and (8) and section 72 of the School Standards and Framework Act 1998(2), and in exercise of the powers conferred on the National Assembly for Wales by section 19(3), section 34(5), section 35(4) and (5), section 36(4) and (5), section 136(c), section 157(1), section 168(1) and (2), section 210(7) and section 214(1) and (2) of the Education Act 2002(3), and now vested in them make the following Regulations:

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- (1) 1996 c.56. Section 342 was substituted by the School Standards and Framework Act 1998 (c.31), section 140(1), Schedule 30, paragraph 82.
 - (2) 1998 c.31. Section 72 has been amended by the Education Act 2002 (c.32) but the amendment is not relevant. Section 138 has been amended by the Education and Inspections Act 2006 (c.40), section 175, Schedule 17, paragraph 3(1) and (4); other amendments have been made by that Act to section 138 but none are relevant. Amendments have also been made to section 138 by the Education Act 2002 (c.32) and the Education Act 2005 (c.18) but the amendments are not relevant to these Regulations. The functions of the Secretary of State were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and then to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).
 - (3) 2002 c.32. Section 157 has been amended by section 47(1) and (2) of the Childcare Act 2006 (c.21) and the Education and Skills Act 2008 (c.25), section 169, Schedule 1, Part 1, paragraphs 13 and 16 and Schedule 2. Section 210 is amended by section 21(1), (3)(a) and (c)(i) and (ii) of the Learner Travel (Wales) Measure 2008 (nawm 2). Further

Title and commencement

1.—(1) The title of these Regulations is the Education (Miscellaneous Amendments relating to Safeguarding Children) (Wales) Regulations 2009 and they come into force on 12 October 2009.

(2) These Regulations apply in relation to Wales.

Amendments to the Education (Special Schools) Regulations 1994

2.—(1) The Education (Special Schools) Regulations 1994(1) are amended as follows.

(2) In regulation 7—

(a) in paragraph (1), after sub-paragraph (b), insert—

“(ba) a direction under section 142(8) of the Education Act 2002(2);”;

(b) after paragraph (1), insert—

“(1A) The Welsh Ministers may withdraw their approval for a school on the ground that, in the case of that school, it has employed a person who is barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006(3).”.

Amendments to the Education (Foundation Body) (Wales) Regulations 2001

3.—(1) The Education (Foundation Body) (Wales) Regulations 2001(4) are amended as follows.

(2) In paragraph 5 of Schedule 2—

(a) in sub-paragraph (1), after “restricted”, insert “, or is subject to a direction under section 142 of the Education Act 2002(5), or is barred from regulated activity relating to children in accordance with section 3(2) of the

amendments are made by that Measure and by the Childcare Act 2006 (c.21) to section 210 but none are relevant to these Regulations. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

(1) S.I. 1994/652. These Regulations have been revoked so far as they apply to England but continue in force so far as they apply to Wales.

(2) 2002 c.32; section 142 is repealed by section 63(2) and Schedule 10 of the Safeguarding Vulnerable Groups Act 2006 (c.47) and it is intended the repeal will come into force on 12 October 2009.

(3) 2006 c.47.

(4) S.I. 2001/2709 (W.228).

(5) 2002 c.32; section 142 is repealed by section 63(2) and Schedule 10 of the Safeguarding Vulnerable Groups Act 2006 (c.47) and it is intended the repeal will come into force on 12 October 2009.

**Amendments to the Independent School Standards
(Wales) Regulations 2003**

4.—(1) The Independent School Standards (Wales) Regulations 2003(2) are amended as follows.

(2) In regulation 2 in the definition of “appropriate criminal record certificate”—

- (a) after “section 113B of the Police Act 1997” insert “which includes suitability information relating to children within the meaning of section 113BA(2) of that Act”;
- (b) after “section 113A of the Police Act 1997” insert “which includes suitability information relating to children within the meaning of section 113BA(2) of that Act”; and
- (c) omit the words “provided that, in both cases, where the person holds a position mentioned in section 113C(5) of the Police Act 1997, the certificate also contains the information specified in section 113C(1) of that Act”.

(3) In the Schedule in sub-paragraph (e) of paragraph 4, after “any member of staff” insert “is barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006(3) or”.

**Amendments to the Independent Schools (Provision
of Information) (Wales) Regulations 2003**

5.—(1) The Independent Schools (Provision of Information) (Wales) Regulations 2003(4) are amended as follows.

(2) In regulation 2(1) in the definition of “appropriate criminal record certificate”—

- (a) after “section 113B of the Police Act 1997” insert “which includes suitability information relating to children within the meaning of section 113BA(2) of that Act”;
- (b) after “section 113A of the Police Act 1997” insert “which includes suitability information

(1) 2006 c.47.
(2) S.I. 2003/3234 (W.314), as amended by S.I. 2007/947 (W.81), S.I. 2005/2929 (W.214).
(3) 2006 c.47. S.I. 2009/1797 specifies that, for the purposes of section 3(2)(b), the list maintained under Article 6(1)(a) of the Safeguarding Vulnerable Groups Act Order 2007 (S.I. 2007/1351 (N.I. 11)) (i.e. the children’s barred list for Northern Ireland) is a list that corresponds to the children’s barred list established and maintained under section 2(1)(a) of the Safeguarding Vulnerable Groups Act 2006.
(4) S.I. 2003/3230 (W.310), as amended by S.I. 2007/947 (W.81).

relating to children within the meaning of section 113BA(2) of that Act”; and

- (c) omit the words “provided that, in both cases, where the person holds a position mentioned in section 113C(5) of the Police Act 1997, the certificate also contains the information specified in section 113C(1) of that Act;”.

- (3) For paragraph (2) of regulation 2, substitute—

“(2) Any reference in these Regulations to a person employed at a school is a reference to a person—

- (a) providing education—

(i) at a school;

(ii) at a further education institution;

(iii) under a contract of employment or for services where the other party to the contract is a local education authority or a person exercising a function relating to the provision of education on behalf of a local education authority;

- (b) taking part in the management of an independent school; or

- (c) carrying on work which—

(i) brings that person regularly into contact with children, and

(ii) is carried out at the request of or with the consent of a relevant employer (whether or not under a contract).

(3) For the purposes of paragraph (2) “relevant employer” (“*cyflogwr perthnasol*”) means—

- (a) a local education authority;

(b) a person exercising a function relating to the provision of education on behalf of a local education authority;

- (c) the proprietor of a school; or

(d) the governing body of a further education institution.”.

Amendments to the Government of Maintained Schools (Wales) Regulations 2005

6. In Schedule 5 to the Government of Maintained Schools (Wales) Regulations 2005(1)—

- (a) after sub-paragraph (b) of paragraph 9, insert—

(1) S.I. 2005/2914 (W.211), as amended by S.I. 2005/3200 (W.236), S.I. 2006/873 (W.81), and S.I. 2007/944 (W.80).

“(ba) barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006(1);

(bb) subject to a direction by the appropriate authority under section 167A of the Education Act 2002(2);”;
and

(b) in paragraph 12, substitute “113B” for “113”.

Amendments to the Staffing of Maintained Schools (Wales) Regulations 2006

7.—(1) The Staffing of Maintained Schools (Wales) Regulations 2006(3) are amended as follows.

(2) In regulation 3—

(a) in paragraph (1)—

(i) omit the definition of “children’s suitability statement”; and

(ii) where appropriate, insert—

““enhanced criminal record certificate” means an enhanced criminal record certificate within the meaning of section 113B of the Police Act 1997 which includes suitability information relating to children within the meaning of section 113BA(2) of that Act;” and

(b) in sub-paragraph (c) of paragraph (3), after “is not”, insert “barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006(4) or”.

(3) In paragraph (2) of regulation 9A and paragraph (2) of regulation 20A, omit “, and the application for such a certificate must be accompanied by a children’s suitability statement”.

(4) In regulation 15A—

(a) in sub-paragraph (a)(ii) of paragraph (1), omit “accompanied by a children’s suitability statement”;

(b) in paragraph (2), substitute “more” for “less”;
and

(c) in paragraph (6) after sub-paragraph (b) insert—

(1) 2006 c.47.

(2) Section 167A was inserted by section 169 of the Education and Inspections Act 2006 (c.40), but it is not yet in force. It is intended that section 169 of the Education and Inspections Act 2006 will come into force on 12 October 2009.

(3) S.I. 2006/873 (W.81), as amended by S.I. 2007/944 (W.80).

(4) 2006. c.47.

“(ba) a check to establish if he or she is barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006;”.

(5) In regulations 18A and 26A, omit “, and the application for such a certificate must be accompanied by a children’s suitability certificate”.

(6) In regulation 24A—

(a) in sub-paragraph (a)(ii) of paragraph (1), omit “accompanied by a children’s suitability statement”; and

(b) in paragraph (2), substitute “more” for “less”.

Amendments to the Persons Providing Education at Further Education Institutions in Wales (Conditions) Regulations 2007

8.—(1) The Persons Providing Education at Further Education Institutions in Wales (Conditions) Regulations 2007(1) are amended as follows.

(2) In regulation 3—

(a) in paragraph (1)—

(i) omit the definition of “children’s suitability statement”, and

(ii) in the definition of “enhanced criminal record certificate”, after “1997”, insert “which includes suitability information relating to children within the meaning of section 113BA(2) of the Police Act 1997(2) of that Act”; and

(iii) for paragraph (4) substitute—

“(4) In order to carry out an enhanced criminal record check, a person must apply for and obtain an enhanced criminal record certificate.”.

(3) In paragraph (d) of regulation 5, after “whether the person is”, insert “barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006(3) or is”.

(4) In regulation 13, omit “a children’s suitability statement has been submitted and”.

(1) S.I. 2007/2220 (W.175).

(2) Section 113BA was inserted by the Safeguarding Vulnerable Groups Act 2006 (c.47), section 63(1), Schedule 9, Part 2, paragraph 14(1) and (4) and amended by section 170(2) of the Education and Inspections Act 2006 (c.40) and the Education and Skills Act 2008, section 169, Schedule 1, Part 1, paragraph 12(a) and (b).

(3) 2006 c.47.

(5) In sub-paragraph (ii) of paragraph (b) of regulation 17, omit “a children’s suitability statement has been submitted and”.

(6) In paragraph (d) of regulation 18, after “whether the person is”, insert “barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or is”.

(7) In Schedule 1—

(a) in paragraph 3 of Part 1, after “whether the person”, insert “is barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or”; and

(b) in paragraph 2 of Part 2—

(i) in sub-paragraph (b), after “whether the person”, insert “is barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006 or”; and

(ii) in sub-paragraph (f)(ii), omit “and a children’s suitability statement submitted”.

Jane Hutt

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and Skills, one of the Welsh Ministers

17 September 2009