

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

Application to Waiver Disqualification

A CIW Practice Guidance Note

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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The procedure for CIW staff for considering applications for waivers under the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010

1. Background

- 1.1 This guidance applies to registered child minders and day care providers, those employing staff to work in these regulated services and those applying for registration to provide these regulated services.
- 1.2 Some people are disqualified from registration by Care Inspectorate Wales (CIW) as a child minder or in the provision of day care.
- 1.3 CIW may become aware of a potential disqualification in a number of different scenarios, including, but not limited to:
 - a) a person is considering registration and wants to discuss how a conviction may affect their application;
 - b) a person submits a completed registration application form and declares a relevant conviction;
 - c) the results of Disclosure and Barring Service (DBS) checks are received and reveal a relevant conviction;
 - d) a check of CIW records indicate a previous registration has been refused or cancelled; or
 - e) pre registration inquiries of social services have revealed applicable orders have been made.
- 1.4 CIW must evaluate why the person may be disqualified from registration and take into account the full circumstances. After reviewing all available information CIW has discretion to decide whether the disqualification impacts upon the provision of a regulated service. Where a person applies to CIW to have their disqualification set aside, this is known as applying for a waiver.
- 1.5 This guidance sets out:
 - who is disqualified,
 - how to make an application for a waiver under the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010,
 - CIW's procedure for dealing with applications for a disqualification to be waived
- 1.6 For the purposes of this guidance the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010 is referred to as "the

Disqualification Regulations”. Similarly the Children’s and Families (Wales) Measure 2010 is referred to as “the Measure”.

2. Reasons for disqualification

- 2.1 The Disqualification Regulations set out the ways and circumstances in which a person may be disqualified from registration. This includes where a person has been convicted or received a caution in respect of certain offences against adults or children, where certain orders have been made in respect of their children, or where previous applications have been refused by CIW or their registration has previously been cancelled.
- 2.2 The Disqualification Regulations also set out where a person’s disqualification may not take effect and the occasions where a person may apply to CIW to have their disqualification waived
- 2.3 The Measure sets out that a person is prohibited from employing any disqualified person in connection with day care or child minding services.
- 2.4 The Disqualification Regulations set out that the registered person must notify CIW of any matter which would be a ground for disqualification of both themselves and any person who lives or works where the service is provided. If they fail, without reasonable excuse, to notify CIW then they are committing an offence.
- 2.5 The Measure makes it an offence to act as a child minder or provide day care, or be directly concerned in the management of any provision of day care in Wales while disqualified. It is also an offence to employ someone in connection with the provision of child minding or day care if they are disqualified.
- 2.6 There are many different ways in which someone may be disqualified under the regulations. Inspectors are advised to consult the Disqualification Regulations and the Measure in the first instance. Inspectors may request further advice from CIW legal services if required.

3. Application to waiver a disqualification

- 3.1 Disqualification Regulations set out that a person may apply for a waiver if they would be disqualified under Disqualification Regulations 3, 4, 6(1), 6(3) or 8.
- 3.2 In order to apply for a waiver a registered person or a person applying for registration must inform CIW of the facts that would lead them to be disqualified.
- 3.3 In the event that an applicant has not disclosed their disqualification, consideration must be given to refusing their registration. However, the applicant may make representations against this refusal. Representations may include an application to waive their disqualification.
- 3.4 To apply for a waiver to their disqualification, CIW require the request to be made in writing. The person must give CIW as much information as possible.

4. Making a Judgement

- 4.1 Once the facts are brought to CIW's attention the inspector must consider all available information about the circumstances of the case, requesting further information as required.
- 4.2 The inspector may invite the disqualified person (be they the applicant or a person who works / lives at the place of child care provision) to come to a CIW office so that they can discuss the details of their disqualification and other relevant issues. They may be accompanied if they wish.
- 4.3 If the applicant refuses or cancels the above meeting, a further appointment may be offered. This invitation should explain that this is their opportunity to provide relevant information that will help CIW in their decision making. It should be made clear that, if they fail to attend, a decision will be made using the existing information held by CIW.
- 4.4 CIW must be satisfied the applicant is suitable to be registered to act as a child minder or day care provider. Therefore CIW will assess and weigh up the following factors when considering an application for a waiver:
 - a) Openness of the applicant - were the disclosures made by the applicant full, accurate and honest?

- b) Relevance of the conviction - Is the conviction or other matter revealed relevant to the application? This judgment should weigh the nature of the offence and the potential impact on a registered service. CIW must evaluate whether the offence was planned or involved any sort of deception.
- c) Facts of the offence(s) or matter(s) - What were the circumstances surrounding the offence or the matter leading to the disqualification? What explanations were offered by the applicant?
- d) Seriousness of the matter – How serious is any offence or other matter revealed? What impact would similar behaviour be likely to have on children attending the proposed service?

CIW considers that behaviour which has involved the abuse of personal power is likely to render a candidate unsuitable for involvement in caring for children. This will be the case whether this abuse was physical, emotional, financial or sexual.

Past behaviour would also be seen as a strong indication of an applicant's unsuitability where it involved:

- Deception, premeditation, persistent risk taking and / or coercion
 - If the disqualification is because of another person who lives or works in their household / day care provision, CIW must assess the ability of the registered person to safeguard children.
 - Consideration should be given to how much and the nature of the contact that person is expected to have with the children cared for and whether any conditions imposed on the registration might minimise concerns.
- e) Patterns of behaviour – Has there been any repetition of the behaviours in question? Do the matters disclosed suggest that the applicant has a pattern of offending behaviour or other relevant matters? CIW will be most concerned where rule breaking is frequent or the same or similar offences re-occur.
 - f) Timing and applicant's circumstances - How long ago was it since the offence or other matter occurred? What age was the person at the time of the event, and if appropriate the age of any victim? Have the applicant's circumstances changed since the offending behaviour or the other relevant matters? CIW will assess whether any matters disclosed appear to be confined to:
 - adolescence
 - any specific period when the applicant can demonstrate a significant disruption of their personal circumstances and social functioning, or
 - any period more than 15 years ago.

- CIW will be most concerned where rule breaking (law and socially accepted boundaries) persists into later life.
- g) Applicant's attitude - What is the applicant's attitude to these offences now and what is their understanding of the implications of the event? CIW will be most concerned where the applicant attempts to minimise the seriousness of their behaviour and demonstrates a lack of clear insight into the impact of their actions.
- 4.5 The above factors are examples and the list is not intended to be exhaustive. Each situation must be carefully considered on its own particular facts.
- 4.6 Where the disqualification arises because of a conviction or other matter being revealed about a person who lives or works in the applicant's household then the Inspector should first contact that person. His/ her consent to share the information with the applicant must be sought in order that the applicant can seek a waiver. If that consent is withheld then the inspector should seek advice from CIW Knowledge and Information Team about whether any information, and how much, may be shared with the applicant.
- 4.7 On consideration of the facts in the case the inspector will discuss the issues with their line manager and prepare a report setting out their assessment of the factors (a) to (g) in paragraph 4.4.
- 4.8 A copy of the inspector's waiver report will be sent to the applicant for them to review. This will be sent with a request that they confirm that the information contained within the waiver report is correct. The person should be encouraged to make any changes to the report to ensure they are accurately represented. The inspector's recommendation will not be included in this correspondence.

5. Making recommendations

- 5.1 The inspector will make a recommendation to approve or refuse the application for a waiver. The recommendation will be reviewed by the inspector's line manager.
- 5.2 The waiver report will be passed to the Head of Registration and Enforcement (or equivalent grade senior manager) within CIW for consideration and final sign off.

- 5.3 After coming to a decision, the decision maker will then inform the applicant (in writing) of their decision and the reasons for their decision. If the decision is to refuse to grant a waiver then the letter must explain the right of appeal to the Tribunal as follows:

“You have the right to appeal against this decision to the Tribunal. If you wish to appeal you must do so by completing the Appeal application form CS A1 (First Tier Tribunal Health, Education and Social Care Chamber (Care Standards) and sending it to the First Tier Tribunal within 10 working days.

The Appeal Application form is available at <https://www.gov.uk/government/publications/form-cs-a1-appeal-application-form-child-care-providers-and-childrens-homes>

The contact details for the First Tier Tribunal (Health, Education and Social Care Chamber) are

*HM Courts and Tribunals Service
Care Standards
First Floor, Darlington Magistrates’ Court
Parkgate
Darlington
DL1 1RU.
E-mail: cst@hmcts.gsi.gov.uk*

You are requested also to advise the Welsh Ministers of your intention to appeal by writing to Care Inspectorate Wales .

- 5.4 Further support is available from your team manager or the team managers in the registration and enforcement teams.