



Llywodraeth Cymru  
Welsh Government

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Welsh Government

Consultation – summary of response

## Child Minding and Day Care (Disqualification) (Wales) Regulations 2022 (“the draft 2022 Regulations”)

A consultation on draft regulations to replace the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010.

September 2022

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

## **Overview**

This document provides a summary of the responses to the consultation on the Child Minding and Day Care (Disqualification) (Wales) Regulations 2022 (“the draft 2022 Regulations”) which are intended to replace the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010.

## **Action Required**

This document is for information only.

## **Further information and related documents**

Large print, Braille and alternative language versions of this document are available on request.

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## **Additional copies**

This summary of response and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government’s website.

Link to the consultation documentation: [hyperlink](#)

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## **Introduction**

The Deputy Minister for Health and Social Services published a consultation on the Child Minding and Day Care (Disqualification) (Wales) Regulations 2022 (“the draft 2022 Regulations”) on 31 March 2022 for twelve weeks duration.

This document provides a summary of the responses to the consultation on the draft 2022 Regulations which are intended to replace the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010 (“the 2010 Regulations”).

The 2010 Regulations set out the categories of people who are disqualified from registration in Wales, as a child minder or provider of day care under Part XA of the Children Act 1989. People who are disqualified must not act as child minders, provide day care or be concerned in the management of any provision of day care in Wales. Nor must they be employed in connection with the provision of child minding or day care. In simple terms, these regulations help to mitigate the risks of harm to children attending registered childcare settings in Wales.

The 2010 Regulations required updating to reflect developments in the law and to ensure that they are fairer to all. To this end, the Welsh Government published the draft 2022 Regulations and consulted upon the proposed changes over a 12-week consultation period, closing on 23 June 2022.

## **Proposals**

The draft 2022 Regulations update the 2010 Regulations to reflect current law in England and Wales, Scotland, Northern Ireland and in the Crown Dependencies of Isle of Man, Jersey and Guernsey. These amendments reflect the inclusion of a small number of new offences and changes to some references to legislation to bring them up to date.

The following policy changes are reflected in the draft 2022 Regulations;

- that individuals who are foster carers, kinship carers or adoptive parents are not automatically disqualified from registration as a child minder or day care provider (and from working in these childcare settings) if they are caring for a child who is or who has been the subject of a Care or Supervision Order. This change however does not cover the situation of a foster carer, kinship carer or adoptive parent whose care resulted in the making of the Order.
- that individuals who have themselves been the subject of Care or Supervision Orders in the past are not automatically disqualified from registration as a child minder or day care provider and from working in these settings. This change however will not apply to an individual who was themselves subject of these orders and their care of their own children has also resulted in the making of such orders.

- removal of the “disqualification by association” provision in respect of providers of day care who work in settings that are separate from where they live. This means that providers of day care are not disqualified from registration or from working in childcare because of actions on the part of someone they live with or someone who works in their home.

## **Engagement**

Views were invited as part of a 12-week consultation period between 31 March to 23 June 2022. The consultation was published on the consultation pages of the Welsh Government’s website. Respondents were able to submit their views and comments on paper, by email or online, and in Welsh or English.

Childcare providers were able to respond directly to the consultation and were also able to participate in online workshops to feed into the response submitted by the Cwlwm<sup>1</sup> childcare consortium. Sessions were facilitated and run by Cwlwm and supported by Welsh Government which took place in May, 10 May (15 child minders attended) and 11 May (24 day-care providers attended).

The responses for these events have been incorporated into a single response from Cwlwm. Welsh Government would like to thank Cwlwm and childcare providers who engaged in these tailored sessions during the consultation and provided their feedback.

## **Overview of responses**

In total the consultation received eight responses. Of these, five via online questionnaire, and three by email. Four respondents wished to remain anonymous. Of the others two were from local authorities, one from Cwlwm (including the amalgamated feedback from day care and child minders workshops), and one from the Children’s Commissioner for Wales.

## **Summary of responses**

The following section details the responses and comments that were received in relation to the consultation questions.

### **Question 1: Additional Offences**

We would like to know your views on the update to the list of offences in the Child Minding and Day Care (Disqualification) (Wales) Regulations 2022 which disqualify people from registration.

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<sup>1</sup>Cwlwm is the childcare consortium made up of the five leading childcare organisations in Wales. Mudiad Meithin, PACEY Cymru, National Day Nurseries Association (NDNA Cymru), Early Years Wales and Clybiau Plant Cymru Kids’ Clubs.

**a) Are there any offences which you do not think should be included?**

If “yes”, which one/s

Yes	No
-	8

All eight responses to this question agreed with the inclusion of the proposed additional offences (100%).

Cwlwm’s response on behalf of childcare providers set out some additional comments about the possibility of looking at other countries’ childcare regulations to see whether they listed any offences which should also be covered by our Regulations; a general point was also raised on the ability of disqualified persons being able to challenge their disqualification if they were no longer a danger to children.

There were some concerns expressed about how the new Police, Crime, Sentencing and Courts Bill 2019-21 (HC Bill 268) may affect how political activism is viewed and its potential to be included within scope of offences concerned with involvement in acts of terrorism.

**b) Are there other offences not listed which you think should be listed at schedules 1 and 3?**

If “yes”, which one/s

Yes	No
2	6

Most people who responded (75%) did not think any other offences should be listed at schedules 1 and 3.

Of the two respondents (25%) who said yes, one response suggested a comparison could be carried out to analyse the vetting procedures within social services/police and other public-facing organisations where vulnerable people or children are involved.

The other respondent who said yes was from Cwlwm. They proposed that the regulations should be reviewed regularly and kept up to date with changes to the law. No specific additional offences were suggested, however, Cwlwm provided the following feedback:

- Psychoactive Substance Act 2016 - whilst recognising this legislation makes it an offence to supply illegal substances to a child there may be other drug related offences which could potentially be included in the Regulations.
- Domestic abuse - more clarification and consideration of domestic abuse offences and safeguarding of children in their care, this was highlighted as being particularly relevant for child minders, given the nature of their service and circumstances of operating from domestic premises bringing children into

contact with others in the household.

- Stalking/harassment/cyber bullying (including on social media platforms) – concerns were raised around the fast-moving nature of developments in social media and the harms it can cause to children. It was felt that this was an area where the childcare sector needed support and guidance when navigating any changes made to the law.
- Drink driving offences –consideration for potential inclusion in the Regulations.

## Question 2: Care and Supervision Orders

We have set out our plans for proposed exemptions from disqualification with regard to care and supervision Orders where the applicant for registration or the registered child minder or provider of day care had no involvement in the reason for the making of such an order.

- a) **Do you agree with the exemption in relation to foster carers (including kinship foster carers) and adoptive parents caring for a child who has a care and/or supervision Order placed on them but not as a result of the actions of the foster carer, kinship foster carer or adoptive parent?**

Yes	No
8	-

All of the respondents (100%) agreed and welcomed the exemption outlined as a fair approach when the reason for the care order is not because of their (the foster carer, kinship foster carer or adoptive parents') actions.

It was felt fair to exempt those who have not caused the reason for the care order but are affected by it. It was also considered that this would support more foster carers in becoming registered childminders and vice versa and would not undermine the protection and safeguarding of children.

- b) **Do you agree with the exemption in relation to people who want to be registered as a child minder or day care provider but who had a care and/or supervision Order placed on them when they were a child?**

Yes	No	Did not respond
7	-	1

All those who responded to this question agreed with the proposed exemption. Removing this anomaly would remove the need for waivers to be sought and support greater inclusion and opportunities for registration of childminders and day care providers.

The Children's Commissioner welcomed the proposed changes considering that it removed any potential for unfair treatment or discrimination against those who were

previously the subject of a care or supervision order, when this was not related to their own behaviours or actions.

A number of respondents provided comments to stress that all other relevant factors were still considered before an application was accepted for registration.

### **Question 3: Disqualification by association**

We have set out our intention to retain the disqualification by association element in respect of people who wish to apply to register as a child minder on domestic premises (i.e. working from their home) but to remove this element for people who want to register to provide day care or who are already registered to provide day care on non-domestic premises (by this we mean people who normally provide childcare services on premises which is not also their home).

**a) Do you agree that the “disqualification by association” provision should not apply in respect of people applying to register or currently registered as a provider of childcare on non-domestic premises, as set out in regulation 8?**

Yes	No	Unsure
5	2	1

The majority of responses (63%) to the question agreed with the proposed changes to the disqualification by association provision.

Some of those who supported the proposal, including the Children’s Commissioner, flagged the need to ensure that appropriate safeguards are in place to ensure policies are in place to manage this and the attendance of any non-authorized personnel at the setting.

Cwlwm were unsure about the proposed change to the disqualification by association arrangements and could see arguments both in favour and against which they noted in their response;

- unfair to exclude or disqualify someone based on the criminal activity of someone else
- registered persons hold a position of trust regarding the safeguarding of children and practitioners and in some instances their home life may impact their working life.
- There are several childminders in Wales who work with another childminder and therefore do not provide the service at their own home but on another domestic property. In such circumstances it would seem fairer for the proposed changes to the disqualification by association provision to apply equally to them as day care settings given that the individuals associated with the childminder in question would not be on the same premises where childcare is taking place.



- Many childcare settings operate in shared premises or community buildings meaning that registered persons may have to carry out administrative work at home, leading to possible breaches of personal data or images where the associated person could gain access to computer equipment. While most registered persons would be careful not to allow a member of their household to have this access there is also the possibility a provider may be in an abusive, coercive, or manipulative relationship that may override their safeguarding practice.

**b) If no, would your preference be to retain the “disqualification by association” element in respect of individuals applying to register as a provider of day care or registered providers of day care on non-domestic premises, as well as for child minders working from their home?**

If No, what approach would be your preferred approach and why?

Yes	No	Unsure
2	-	1

Two respondents wished to retain the current disqualification by association arrangements.

One respondent suggested that there should be a “declaration of association” as it was a big responsibility for a setting to manage this requirement.

Cwlwm took the view that while the risk to children may be small, any changes to disqualification by association regulations should be thoroughly risk assessed and considered on a case-by-case basis.

#### **Question 4: Impact on the Welsh Language**

We would like to know your views on the effects that the draft 2022 Regulations intended to replace the existing Child Minding and Day Care (Disqualification) (Wales) Regulations 2010 (“the 2010 Regulations”) would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

**What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?**

The comments received in relation to this open question were of the view that updating this piece of legislation would not have an effect on the Welsh language, either negative or positive.

Other comments received were general and in relation to how the update to the regulations would have an impact on other areas such as, creating more opportunities for people to consider childcare as a career; ensuring that both English and Welsh languages are treated equally and issues around staff recruitment and retention and

particularly the challenges of creating more Welsh medium provision.

### **Question 5: Other issues**

**If you would like to raise any issues in relation to the draft 2022 Regulations which have not been specifically addressed in this consultation document, please use this space to report them.**

Consultees called for detailed guidance to support the draft 2022 Regulations, setting out how registered persons could ensure they were compliant with the regulatory requirements. Respondents also suggested more guidance around safe recruitment practice and how to ensure the safeguarding and protection of children from people other than those employed at the setting.

Cwlwm sought assurances that there was a parity of approach around disqualification by association in other sectors working with children, for example in education settings.

### **Welsh Government Response Consultation outcomes and next steps**

#### **Key decisions**

The responses to the consultation show that respondents are largely in favour of the proposed changes set out in the 2022 draft Regulations.

Respondents asked for guidance to be made available to support the Regulations so that registered persons are clear about the regulatory requirements they needed to meet to ensure compliance with the law.

During the period of our consultation exercise section 67A of the Sexual Offences Act 2003, included in Schedule 3 of the 2022 draft Regulations, has been amended to include an additional offence which came into force in June 2022 in relation to recording images of a person breastfeeding. This offence is closely aligned to the provisions relating to voyeurism and upskirting which were highlighted in the consultation and supported by all respondents. The 2022 draft Regulations have been drafted in such a way as to accommodate this and any further changes to section 67A of the Sexual Offences Act 2003. We will only consult on future updates where we think it necessary to diverge from UK Government approach.

We will not look to make any amendments to the 2022 draft Regulations before laying in the Senedd later this year and will ensure the supporting guidance provides clarity for providers setting out the specific requirements they need to meet in order to comply with the law. The guidance will clarify points raised in the consultation confirming for example that the changes to the Disqualification by Association provisions would also apply to childminders working away from their own household.

It is our expectation that the Regulations will be kept under regular review and updated on a cyclical basis taking account of significant changes to relevant wider legislation which impact upon them.