

Explanatory Memorandum - Disqualification from Caring for Children (Wales) (Amendment) Regulations 2008

This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

- (i) **Description** - This Statutory Instrument amends the Disqualification from Caring for Children (Wales) Regulations 2004 by substituting for existing references to the Tribunal established under section 9 of the Protection of Children Act 1999 (“the Tribunal”) references to the First-tier Tribunal to be established under the Tribunals, Courts and Enforcement Act 2007.
- (ii) **Matters of special interest to the Subordinate Legislation Committee** – None.
- (iii) **Legislative Background** – The Disqualification from Caring for Children (Wales) Regulations 2004 were made under sections 68 (1) and (2), 79C (2) and (3), 79M (1)(c) and 104 (4) of, and paragraph 4 of Schedule 9A to, the Children Act 1989. In accordance with section 14 of the Interpretation Act 1978 these powers are also being used to make the necessary amendments to the 2004 Regulations.
- (iv) **Purpose and intended effect of the legislation** – The 2004 Regulations make provision for the circumstances in which a person is disqualified from fostering a child privately and sets out the categories of persons who are disqualified from registering in Wales as child minders or providers of day care.

The categories of persons so disqualified under the 2004 Regulations include a person convicted of offences specified in the Schedule to the 2004 Regulations except where that person has appealed against their disqualification order and the appeal body has determined that the person is no longer to be subject to the disqualification order. Under the 2004 Regulations appeals against disqualification orders were made to the Tribunal established by section 9 of the Protection of Children Act 1999 (“the Tribunal”).

Pursuant to the Tribunals, Courts and Enforcement Act 2007 the existing functions of the Tribunal have been transferred to the First-tier Tribunal and these Regulations amend the 2004 Regulations accordingly. They provide that any reference to the Tribunal in the 2004 Regulations shall be replaced by a reference to the First-tier Tribunal and insert into regulation 3 of the 2004 Regulations a definition of the First-tier Tribunal.

The Statutory Instrument is made under sections 68 (1) and (2), 79C (2) and (3), 79M (1)(c) and 104 (4) of, and paragraph 4 of Schedule 9A to, the Children Act 1989.

- (v) **Implementation** – This instrument follows the negative resolution procedure, and will come into force on 03 November 2008.
- (vi) **Consultation** – Given that this is a technical change necessitated by changes in primary legislation, public consultation is not considered appropriate.
- (V) **Regulatory Impact Assessment** – a Regulatory Impact Assessment has not been prepared as this legislation simply updates existing legislation to account for technical changes required as a result of the Tribunals Courts and Enforcement Act 2007.