

2002 No. 635

CHILDREN AND YOUNG PERSONS, ENGLAND

**Disqualification from Caring for Children (England)
Regulations 2002**

Made - - - - - *7th March 2002*

Laid before Parliament *11th March 2002*

Coming into force *1st April 2002*

The Secretary of State, in exercise of the powers conferred by section 68(1) and (2) of the Children Act 1989(a) and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Disqualification from Caring for Children (England) Regulations 2002 and shall come into force on 1st April 2002.

(2) In these Regulations—

“the Act” means the Children Act 1989; and

“the 2000 Act” means the Care Standards Act 2000(b).

(3) These Regulations extend to England only.

Grounds for disqualification

2.—(1) For the purposes of section 68 of the Act (persons disqualified from being private foster parents) a person is disqualified from fostering a child privately if any of the following provisions of this regulation apply to him.

(2) He is a parent of a child with respect to whom an order has been made at any time under—

(a) section 31(1)(a) of the Act (care order); or

(b) Article 50(1)(a) of the Children (Northern Ireland) Order 1995(c) (care order).

(3) One of the following orders has been made at any time with respect to a child so as to remove the child from his care, or prevent the child living with him—

(a) an order under section 31(1)(a) of the Act;

(b) any order that would have been deemed to be a care order by virtue of paragraph 15 of Schedule 14 to the Act (transitional provisions for children in compulsory care), had it been in force immediately before the day on which Part IV of the Act came into force(d);

(a) 1989 c.41. These powers are exercisable by the Secretary of State in relation to England. Their exercise in relation to Wales has been transferred to the National Assembly for Wales by virtue of article 2 of, and the entry for the Children Act 1989 in, Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

(b) 2000 c.14.

(c) S.I. 1995/755 (N.I.2).

(d) Part IV of the Act came into force on 14th October 1991.

- (c) a supervision order which imposes a residence requirement under paragraph 5 of Schedule 6 to the Powers of Criminal Courts (Sentencing) Act 2000**(a)** or section 12AA of the Children and Young Persons Act 1969**(b)** (requirement to live in local authority accommodation);
 - (d) an order under Article 50(1)(a) of the Children (Northern Ireland) Order 1995; or
 - (e) a fit person order, parental rights order, or training school order under the Children and Young Persons Act (Northern Ireland) 1968**(c)**.
- (4) A supervision requirement has been imposed at any time with respect to a child so as to remove that child from his care, under—
- (a) section 44 of the Social Work (Scotland) Act 1968**(d)**; or
 - (b) section 70 of the Children (Scotland) Act 1995**(e)**.
- (5) His rights and powers with respect to a child have at any time been vested in a local authority in Scotland—
- (a) under section 16 of the Social Work (Scotland) Act 1968**(f)**; or
 - (b) pursuant to a parental responsibilities order under section 86 of the Children (Scotland) Act 1995.
- (6) He has been convicted of—
- (a) an offence against a child within the meaning of section 26(1) of the Criminal Justice and Court Services Act 2000**(g)**;
 - (b) any offence specified in the Schedule to these Regulations; or
 - (c) any other offence involving bodily injury to a child.
- (7) He is a person—
- (a) who has been refused registration in respect of a children's home under section 13 of the 2000 Act;
 - (b) whose registration in respect of a children's home has been cancelled under section 14 or 20(1) of the 2000 Act; or
 - (c) who has been concerned in the management of, or had any financial interest in, a children's home, in respect of which the registration of any person has been cancelled under section 14 or 20(1) of the 2000 Act.
- (8) He is a person who has at any time been refused registration in relation to a voluntary home or a children's home, or who carried on, was otherwise concerned with the management of, or had any financial interest in, a voluntary home or a children's home the registration of which was cancelled, under, as the case may be—
- (a) paragraph 1 of Schedule 5 to the Act**(h)**;
 - (b) paragraph 1 or 4 of Schedule 6 to the Act;
 - (c) section 127 of the Children and Young Persons Act (Northern Ireland) 1968**(i)**; or
 - (d) Article 80, 82, 96 or 98 of the Children (Northern Ireland) Order 1995.
- (9) He is a person in respect of whom—
- (a) a prohibition has been imposed at any time under—
 - (i) section 69 of the Act, section 10 of the Foster Children Act 1980**(j)** or section 4 of the Children Act 1958**(k)** (power to prohibit private fostering);

(a) 2000 c.6.

(b) 1969 c.54. Section 12AA was repealed by the Powers of Criminal Courts (Sentencing) Act 2000.

(c) 1968 c.34 (N.I.). The provisions relating to these orders were repealed by the Children (Northern Ireland) Order 1995 and the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504) (N.I.9).

(d) 1968 c.49. Section 44 was repealed by the Children (Scotland) Act 1995.

(e) 1995 c.36.

(f) Section 16 was repealed by the Children (Scotland) Act 1995.

(g) 2000 c.43.

(h) This provision, and those mentioned in the following sub-paragraph are repealed by the Care Standards Act 2000 with effect from 1st April 2002 (S.I. 2001/3852) (C.125).

(i) This section, and all other sections of the Children and Young Persons Act (Northern Ireland) 1968 referred to below in this regulation were repealed by the Children (Northern Ireland) Order 1995.

(j) 1980 c.86. The Foster Children Act was repealed by the Children Act 1989.

(k) 1948 c.65. Section 4 was repealed by the Foster Children Act 1980.

- (ii) Article 110 of the Children (Northern Ireland) Order 1995 (power to prohibit private fostering); or
- (iii) section 10 of the Foster Children (Scotland) Act 1984 (power to prohibit the keeping of foster children)(a); or
- (b) a notice in writing has been given by a Health and Social Services Board under section 1(3) of the Children and Young Persons Act (Northern Ireland) 1968 (withholding consent to the care and maintenance of the child being undertaken by a person).
- (10) He has at any time been refused registration in respect of the provision of nurseries or day care, or for child minding, or had any such registration cancelled under, as the case may be—
 - (a) Part X or XA of the Act(b);
 - (b) section 1 or 5 of the Nurseries and Child-Minders Regulation Act 1948(c);
 - (c) Part XI of the Children (Northern Ireland) Order 1995; or
 - (d) section 11(5) or 15 of the Children and Young Persons Act (Northern Ireland) 1968.
- (11) He has at any time been refused registration or had such registration cancelled—
 - (a) under section 62 of the Social Work (Scotland) Act 1968 (registration of residential and other establishments); or
 - (b) in respect of a care home service, child minding or day care of children, under Part 1 of the Regulation of Care (Scotland) Act 2001(d).

Revocation

- 3. The Disqualification for Caring for Children Regulations 1991(e) are revoked.

Signed by authority of the Secretary of State

7th March 2002

Jacqui Smith
Minister of State,
Department of Health

(a) 1984 c.56.
 (b) Part X of the Children Act has ceased to extend to England, and Part XA is inserted, by section 79 of the Care Standards Act 2000 (S.I. 2001/2041) (C.68).
 (c) 1948 c.53. This Act was repealed by the Children Act 1989.
 (d) 2001 asp 8.
 (e) S.I. 1991/2094 as amended by S.I. 1997/2308.

SPECIFIED OFFENCES

Offences in England and Wales

1.—(1) An offence under any of the following—

- (a) section 49 or 50(9) of the Act (offences relating to the abduction of a child in care);
- (b) section 78, 79D or 79F(6) of the Act (offences relating to child minding and day care);
- (c) section 70 of the Act, section 16 of the Foster Children Act 1980(a), or section 14 of the Children Act 1958(b) (offences relating to private fostering); or
- (d) paragraph 1(5) of Schedule 5 to, section 63(10) of, or paragraph 2(3) of Schedule 6 to, the Act (offences relating to voluntary homes and children's homes)(c).

(2) An offence in relation to a children's home under or by virtue of any of the following provisions of the 2000 Act—

- (a) section 11(1) (failure to register);
- (b) section 24 (failure to comply with conditions);
- (c) section 25 (contravention of regulations);
- (d) section 26 (false descriptions of establishments and agencies); or
- (e) section 27 (false statements in applications).

Offences in Scotland

2.—(1) An offence of rape.

(2) An offence specified in Schedule 1 to the Criminal Procedure (Scotland) Act 1995(d).

(3) The common law offence of plagiary (theft of a child below the age of puberty).

(4) An offence under section 52 or 52A of the Civic Government (Scotland) Act 1982 (offences relating to indecent photographs of children)(e).

(5) An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of trust)(f).

(6) An offence under any of the following—

- (a) section 83 or 89 of the Children (Scotland) Act 1995 or section 17(8) or 71 of the Social Work (Scotland) Act 1968(g) (harbouring offences);
- (b) section 6 of the Child Abduction Act 1984 (taking or sending child out of United Kingdom)(h);
- (c) section 78 of the Act (offences relating to child minding and day care); or
- (d) section 15 of the Foster Children (Scotland) Act 1984 (offences relating to private fostering).

(a) This provision was repealed by the Children Act 1989.

(b) This provision was repealed by the Foster Children Act 1980.

(c) These provisions are repealed by the Care Standards Act 2000 with effect from 1st April 2002 (S.I. 2001/3852) (C.125).

(d) 1995 c.46.

(e) 1982 c.45. Section 52A was inserted by section 161 of the Criminal Justice Act 1988 (c.33).

(f) 2000 c.44.

(g) Sections 17(8) and 71 of the 1968 Act were repealed by the Children (Scotland) Act 1995.

(h) 1984 c.37.

(7) An offence under or by virtue of section 60(3), 61(3) or 62(6) of the Social Work (Scotland) Act 1968 (offences relating to residential and other establishments).

(8) An offence in relation to a care home service, child minding or day care of children, under or by virtue of any of the following provisions of the Regulation of Care (Scotland) Act 2001—

- (a) section 21 (offences in relation to registration);
- (b) section 22 (false statements in applications); or
- (c) section 29(10) (offences in regulations).

Offences in Northern Ireland

3.—(1) An offence of rape.

(2) An offence specified in Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968.

(3) An offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs)(a).

(4) An offence contrary to Article 9 of the Criminal Justice (Northern Ireland) Order 1980 (inciting girl under 16 to have incestuous sexual intercourse)(b).

(5) An offence contrary to Article 15 of the Criminal Justice (Evidence etc.) (Northern Ireland) Order 1988 (possession of indecent photographs of children)(c).

(6) An offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of trust).

(7) An offence under any of the following—

- (a) Article 68 or 69(9) of the Children (Northern Ireland) Order 1995 (offences relating to the abduction of a child in care);
- (b) Article 132 of the Children (Northern Ireland) Order 1995, or section 14 of the Children and Young Persons Act (Northern Ireland) 1968(d) (offences relating to child minding and day care);
- (c) Article 117 of the Children (Northern Ireland) Order 1995, or section 9(1) of the Children and Young Persons Act (Northern Ireland) 1968 (offences relating to private fostering); or
- (d) Article 79(3), 81(4), 95(3) or 97(4) of the Children (Northern Ireland) Order 1995, or section 127(5) or 129(3) of the Children and Young Persons Act (Northern Ireland) 1968 (offences relating to voluntary homes and children's homes).

Other offences

4.—(1) An offence contrary to section 170 of the Customs and Excise Management Act 1979(e) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions)(f) where the prohibited goods included indecent photographs of children under the age of 16.

(2) An offence by virtue of—

- (a) section 7 of the Sex Offenders Act 1997 (extension of jurisdiction: England and Wales and Northern Ireland)(g); or
- (b) section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (commission of certain sexual offences outside the United Kingdom)(h).

(3) An offence contrary to section 32(3) of the Children and Young Persons Act 1969 (detention of absentees).

(a) S.I. 1978/1047 (N.I.17).

(b) S.I. 1980/1704 (N.I.6).

(c) S.I. 1988/1847 (N.I.17).

(d) This section of the Children and Young Persons Act (Northern Ireland) 1968, and those mentioned in the following sub-paragraphs were repealed by the Children (Northern Ireland) Order 1995.

(e) 1979 c.2.

(f) 1876 c.36.

(g) 1997 c.51.

(h) 1995 c.39. Section 16A was inserted by section 8 of the Sex Offenders Act 1997.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace, with modifications, the Disqualification for Caring for Children Regulations 1991, for England only. They come into force on 1st April 2002.

Regulation 2 makes provision for the circumstances in which a person is disqualified from fostering a child privately. By virtue of section 68 of the Children Act 1989 such a person may only foster a child privately with the consent of the local authority.

A person will be disqualified if, in particular,

- a care or similar order has been made with respect to his child, or so as to remove a child from his care;
- he has been convicted of an offence specified in the Regulations;
- he has been refused registration, or had any such registration cancelled in respect of a children's home, day care provision or for childminding; or
- a prohibition has been imposed upon him in respect of private fostering.

By virtue of section 65 of the Children Act 1989, as amended by the Care Standards Act 2000, a person who is disqualified from fostering a child privately is also disqualified from carrying on or being concerned in the management of, or having any financial interest in, a children's home, and may not be employed in a children's home, without the consent of the National Care Standards Commission.

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