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STATUTORY INSTRUMENTS

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**1991 No. 2094**

**CHILDREN AND YOUNG PERSONS**

**The Disqualification for Caring for Children Regulations 1991**

*Made* - - - - *17th September 1991*  
*Laid before Parliament* *23rd September*  
*1991*  
*Coming into force* - - *14th October 1991*

The Secretary of State for Health in relation to England and Wales in exercise of the powers conferred by section 68(1) and (2) of and paragraph 8 of Schedule 5 and paragraph 2 of Schedule 9 to the Children Act 1989(1) and the Secretary of State for Scotland in relation to Scotland in exercise of the powers conferred by the said paragraph 2 of Schedule 9 and, in each case, of all other powers enabling them in that behalf hereby make the following Regulations:—

**Citation commencement interpretation and extent**

1.—(1) These Regulations may be cited as the Disqualification for Caring for Children Regulations 1991 and shall come into force on 14th October 1991.

(2) In these Regulations unless the context otherwise requires—

- (a) “the Act” means the Children Act 1989;
- (b) any reference to a Schedule is to the Schedule to these Regulations.

(3) These Regulations extend to Scotland only in so far as they provide for disqualification from registration under Part X of the Act (childminding and day care).

**Disqualification from fostering a child privately or registration under Part X of the Act**

2. For the purpose of section 68 (persons disqualified from being private foster parents) and of paragraph 2 of Schedule 9 to the Act (disqualification from registration), a person is disqualified from fostering a child privately or registering under section 71 of the Act (registration for child-minding and day-care) if—

- (a) he is a parent of a child who at any time has been made the subject of an order under section 31(1)(a) of the Act (care order);
- (b) 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—

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(1) 1989 c. 41. Paragraph 2 of Schedule 9 to the Children Act 1989 was amended by paragraph 30 of Schedule 16 to the Courts and Legal Services Act 1990 (c. 41).

- (i) an order under section 31(1)(a) of the Act or an order under section 1(3)(c) or 7(7) (a) of the Children and Young Persons Act 1969(2) (care orders),
- (ii) any other 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 comes into force,
- (iii) a supervision order which imposes a residence requirement under section 12AA of the Children and Young Persons Act 1969(3) (requirement that young offender live in local authority accommodation),
- (iv) an approved school order or a fit person order under section 9(1)(a) or (b) of the Children and Young Persons Act 1933(4) or section 61(1)(a) or (b) of the Children and Young Persons (Scotland) Act 1937(5), or
- (v) a fit person order, parental rights order or a training school order under the Children and Young Persons Act (Northern Ireland) 1968(6), or the Children and Young Persons Act (Northern Ireland) 1950(7);
- (c) a supervision requirement has been imposed under the Social Work (Scotland) Act 1968(8) at any time with respect to any child for the purpose of removing that child from his care;
- (d) his rights and powers with respect to the child had at any time been vested in a local authority in Scotland under the Social Work (Scotland) Act 1968 or the Children Act 1948(9);
- (e) an order has been made at any time, for the purposes of removing a child who was being kept, or was about to be received, by him, under—
  - (i) section 34 of the Adoption Act 1976(10) or section 43 of the Adoption Act 1958(11) (removal of protected children from unsuitable surroundings),
  - (ii) section 34 of the Adoption (Scotland) Act 1978(12) (removal of protected children from unsuitable surroundings), or
  - (iii) article 35 of the Adoption (Northern Ireland) Order 1987(13) (removal of protected children from unsuitable surroundings);
- (f) an order removing a child from his care has been made at any time under—
  - (i) section 12 of the Foster Children Act 1980(14) or Part I of the Children Act 1958(15) (removal of foster children),
  - (ii) section 12 of the Foster Children (Scotland) Act 1984(16) (removal of foster children), or

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(2) 1969 c. 54.

(3) Section 12AA was inserted by paragraph 23 of Schedule 12 to the Children Act 1989.

(4) 1933 c. 12.

(5) 1937 c. 37.

(6) 1968 c. 34 (N.I.).

(7) 1950 c. 5 (N.I.).

(8) 1968 c. 49.

(9) 1948 c. 43.

(10) 1976 c. 36. Section 34 of the Adoption Act 1976 was repealed on 14th October 1991 by Schedule 15 of the Children Act 1989 (Commencement and Transitional Provisions) Order 1991 (S.I.1991/828).

(11) 1958 c. 5; this was repealed by the Adoption Act 1976.

(12) 1978 c. 28.

(13) S.I. 1987/2203 (N.I. 22).

(14) 1980 c. 6.

(15) 1958 c. 65; this was repealed by the Foster Children Act 1980.

(16) 1984 c. 56.

- (iii) section 8(1) of the Children and Young Persons Act (Northern Ireland) 1968 or section 6(1) of the Children and Young Persons Act (Northern Ireland) 1950 (removal of foster children);
- (g) he has been convicted of any offence mentioned in the Schedule;
- (h) he is a person who carried on, or was otherwise concerned with the management of, or had any financial interest in, a voluntary home which was removed from the register under
  - (i) section 57(4) of the Child Care Act 1980(17),
  - (ii) paragraph 1(4) of Schedule 5 to the Act,
  - (iii) section 99(4) of the Children and Young Persons Act (Northern Ireland) 1950, or
  - (iv) section 127(4) of the Children and Young Persons Act (Northern Ireland) 1968;
- (i) there has been a refusal to register a voluntary home in relation to an application made by him under—
  - (i) section 57(3) of the Child Care Act 1980(18),
  - (ii) paragraph 1(2) of Schedule 5 to the Act,
  - (iii) paragraph 5 of Schedule 5 to the Act,
  - (iv) section 99(3) of the Children and Young Persons Act (Northern Ireland) 1950, or
  - (v) section 127(3) of the Children and Young Persons Act (Northern Ireland) 1968;
- (j) there has been a refusal to register a registered children’s home in relation to an application made by him under paragraph 1 of Schedule 6 to the Act (application for registration);
- (k) he is a person who carried on or was otherwise concerned with the management of or had any financial interest in a registered children’s home and that home was removed from the register under paragraph 4 of Schedule 6 to the Act (cancellation of registration);
- (l) he is a person in respect of whom a prohibition has been imposed under—
  - (i) section 69 of the Act (power to prohibit private fostering),
  - (ii) section 10 of the Foster Children Act 1980 or Part I of the Children Act 1958 (power to prohibit private fostering), or
  - (iii) section 10 of the Foster Children (Scotland) Act 1984, or a notice in writing is given by a Health and Social Services Board under section 1(3) of the Children and Young Persons Act (Northern Ireland) 1968(19) (withholding consent to the care and maintenance of the child being undertaken by a person);
- (m) he has at any time been refused registration in respect of nurseries day care or child minding or had any such registration cancelled under—
  - (i) section 1 of the Nurseries and Child-Minders Regulation Act 1948(20),
  - (ii) section 5 of the Nurseries and Child-Minders Regulation Act 1948,
  - (iii) Part X of the Act,
  - (iv) section 11(5) of the Children and Young Persons Act (Northern Ireland) 1968, or
  - (v) section 15 of the Children and Young Persons Act (Northern Ireland) 1968.

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(17) 1980 c. 5. Section 57(4) was amended by section 11 of and paragraph 39 of Schedule 4, Part II to the Health and Social Services and Social Security Adjudications Act 1983.

(18) Section 57(3) was amended by section 11 of and paragraph 39 of Schedule 4, Part II to the Health and Social Services and Social Security Adjudications Act 1983 (c. 41).

(19) Section 1(3) was amended by Schedule 16 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)).

(20) 1948 c. 53. Section 1 was amended by section 60 of the Health Services and Public Health Act 1968 (c. 46).

- (n) he has at any time been refused registration or had such registration cancelled under section 62 of the Social Work (Scotland) Act 1968(21)(registration of establishments).

**Disqualification in relation to voluntary homes**

3.—(1) A person who is disqualified under section 68 of the Act from fostering a child privately shall not carry on, or be otherwise concerned in the management of, or have any financial interest in, a voluntary home unless he has—

- (a) disclosed to the Secretary of State the fact that he is so disqualified; and
- (b) obtained his written consent.

(2) No person shall employ a person who is so disqualified in a voluntary home unless he has—

- (a) disclosed to the Secretary of State the fact that that person is so disqualified; and
- (b) obtained the written consent of the Secretary of State.

(3) Where the Secretary of State refuses to give his consent under this regulation he shall inform the person carrying on or intending to carry on the voluntary home by a written notice which states—

- (a) the reason for the refusal;
- (b) the right to appeal against the refusal to a Registered Homes Tribunal under paragraph 5 of Schedule 5 to the Act; and
- (c) the time within which he may do so.

(4) Any person who contravenes paragraph (1) or (2) of this regulation shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.

Signed by authority of the Secretary of State for Health.

16th September 1991

*Virginia Bottomley*  
Minister of State,  
Department of Health

17th September 1991

*Michael Forsyth*  
Minister of State, Scottish Office

## SCHEDULE

(regulation 2(g))

### WHICH DISQUALIFY PERSONS FROM PRIVATE FOSTERING AND REGISTERING UNDER SECTION 71 OF THE ACT

1. Offences specified in Schedule 1 to the Children and Young Persons Act 1933(22) and Schedule 1 to the Criminal Procedure (Scotland) Act 1975(23) and Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968(24) and the Homosexual Offences (Northern Ireland) Order 1982(25).

2. Any offence involving injury or threat of injury to another person.

3. Offences under any of the following—

- (a) section 36(1)(b) or (c) of the Adoption Act 1976(26), or section 36(1)(b) or (c) of the Adoption (Scotland) Act 1978(27), or Article 37(1)(b) or (c) of the Adoption (Northern Ireland) Order 1987 (refusing to allow the visiting of a protected child or inspection of the premises or refusing to comply with or obstructing the removal of the child);
- (b) sections 44(15), 49 or 50(9) of the Children Act 1989 or sections 17(8) or 71 of the Social Work (Scotland) Act 1968 or sections 6 to 10 of the Child Abduction Act 1984(28) or sections 9(1)(e) and (f), 32(3), 140(6) and 144(3) of the Children and Young Persons Act (Northern Ireland) 1968; section 32(3) of the Children and Young Persons Act 1969 (offences of intentional obstruction of a person executing an emergency protection order or in Scotland and Northern Ireland a place of safety order, or abduction or obstruction of lawful recovery of an abducted child);
- (c) section 78 of the Act or section 14 of the Children and Young Persons Act (Northern Ireland) 1968(29) (providing day care or acting as a child minder in unregistered premises or contravening an enforcement order served on him by a local authority acting under that section);
- (d) section 63(10) of the Act (caring for and accommodating a child in a children's home which is not registered) or paragraph 2(3) of Schedule 6 to the Act (breach of conditions attaching to registration of registered children's home);
- (e) section 14 of the Children Act 1958, section 16 of the Foster Children Act 1980, section 70 of the Act, section 15 of the Foster Children (Scotland) Act 1984, or section 9(1) of the Children and Young Persons Act (Northern Ireland) 1968, or section 2(8) of the Children and Young Persons Act (Northern Ireland) 1950 (offences in respect of private fostering);

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(22) Schedule 1 has been amended by sections 48 and 51 of and Schedules 3 and 4 to the Sexual Offences Act 1956 (c. 69), section 1(5) of the Protection of Children Act 1978 (c. 37) as supplemented by section 160 of the Criminal Justice Act 1988 (c. 33) and further amended by section 170 of and paragraphs 8 and 9 of Schedule 15 to that Act and Schedule 16 to that Act.

(23) Schedule 1 has been amended by section 21 of and Schedules 1 and 2 to the Sexual Offences (Scotland) Act 1976 (c. 67) and section 170 of and paragraphs 50 and 51 of Schedule 15 to the Criminal Justice Act 1988.

(24) Schedule 1 has been amended by the Criminal Justice (Northern Ireland) Order 1980 (S.I. 1980/704 (N.I.16)); the Child Abduction (Northern Ireland) Order 1985 (S.I. 1985/1638 (N.I. 17)); the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)). Reference in the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/104 (N.I. 17)) to offences under Schedule 1 include an offence under the Protection of Children (Northern Ireland) Order 1978.

(25) S.I. 1982/1536 (N.I. 19).

(26) Section 36(1)(c) of the Adoption Act 1976 was repealed on 14 October 1991 by Schedule 15 of the Children Act 1989 (Commencement and Transitional Provisions) Order 1991 (S.I. 1991/828).

(27) 1978 c. 28.

(28) There is no exact equivalent to these provisions in Scotland; thus offences relating to children in places of safety, residential establishments or under control are dealt with by section 71 of the Social Work (Scotland) Act 1968 in so far as they relate to inducing/assisting abscondment and harbouring a child. Abduction of a child in care is dealt with under section 17(8) of the 1968 Act and abduction generally under Part II of the Child Abduction Act 1984 (c. 37) which, in Scotland, is not an offence for the purposes of Schedule 1 to the Criminal Procedure (Scotland) Act 1975 (c. 21).

(29) There is no provision for enforcement orders under the relevant Northern Ireland legislation.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (f) section 29(5) of the Children Act 1948, section 57(5) of the Child Care Act 1980(30), paragraph 1(5) of Schedule 5 to the Act, or sections 99(5) and 101(3) of the Children and Young Persons Act (Northern Ireland) 1950, or section 127(5) or 129(3) of the Children and Young Persons Act (Northern Ireland) 1968 (carrying on a voluntary home without it being registered or in contravention of a condition attached to registration);
- (g) section 6(5), 60(3), 61, 62 or 68(3) of the Social Work (Scotland) Act 1968 (refusal of registration and offences in respect of day care or residential care);
- (h) the common law offence in Scotland of plagium (theft of a child below the age of puberty);
- (i) section 52(1)(a) or section 52(A) of the Civil Government (Scotland) Act 1982(31) (offences relating to indecent photograph of children).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations replace the disqualifications contained in the Nurseries and Childminders Regulation Act 1948, the Child Care Act 1980 and the Foster Children Act 1980 which are repealed by the Children Act 1989. The Regulations also include the disqualifications contained in the Children's Homes Act 1982 (c. 20) which had not been brought into force and are repealed by the 1989 Act. To the extent that they apply to disqualification from registration for childminding and day care the Regulations extend also to Scotland.

Regulation 2 and the Schedule specify various circumstances in which a person

- is disqualified from fostering a child privately;
- is disqualified from being registered as a childminder on domestic premises or as a person who provides day care for children under 8 on non-domestic premises; and

Regulation 3 provides that a person who is disqualified under section 68 of the Act from fostering a child privately shall not carry on or be involved with a voluntary children's home or employed in such an establishment without the consent of the Secretary of State.

By virtue of section 65 of the Children Act 1989 a person who is disqualified from fostering a child privately is also disqualified from carrying on or being concerned in the management of a children's home or be employed in such an establishment without the consent of the local authority.

Unlike the preceding legislation which related only to a specific activity, a disqualification under these provisions will serve also to disqualify a person from any of the activities specified in these Regulations.

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(30) Section 57 was amended by section 11 of and paragraph 39 of Schedule 4 Part II to the Health and Social Services and Social Security Adjudications Act 1983.

(31) 1982 c. 45. Section 52A was inserted by section 161 of the Criminal Justice Act 1988.